San Francisco Bay Conservation and Development Commission

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March 4, 2022

TO: Seaport Planning Advisory Committee

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SUBJECT: **San Francisco Bay Plan Amendment 2-19: Howard Terminal Staff Analysis**
(For Committee consideration on March 16, 2022)

Staff Summary

The purpose of the March 16, 2022, Seaport Planning Advisory Committee (SPAC) meeting is for the SPAC to make a recommendation to the San Francisco Bay Conservation and Development Commission (BCDC) regarding Bay Plan Amendment (BPA) 2-19. BPA 2-19 is a request by the Oakland Athletics (the Applicant) to remove the Port Priority Use Area designation from Howard Terminal at the Port of Oakland. To aid in the recommendation, the SPAC will receive a presentation on the findings of a staff analysis on the proposed amendment.

This staff report includes information to inform the SPAC's discussion, including background on the San Francisco Bay Area Seaport Plan (Seaport Plan) and the BPA 2-19 proposal; an analysis of the proposal as it relates to the 2019-2050 Bay Area Seaport Forecast (Cargo Forecast); and policy considerations relevant to the Seaport Plan and San Francisco Bay Plan (Bay Plan) that may factor into the SPAC's recommendation and, ultimately, the Commission's decision.

Discussion questions for this meeting include the following:

- Whether Howard Terminal is needed for Port Priority Use.
- Whether the Applicant's request meets the standard for removing Port Priority Use Areas described in General Policy #4 of the Seaport Plan.
- Whether the proposed removal of the Port Priority Use Area designation from Howard Terminal is consistent with all other relevant Seaport Plan and Bay Plan policies.
- Whether there are any policy considerations or issues that are missing from the discussion that staff should be aware of before developing the staff report and preliminary recommendation for the Commission.

Report Contents

Staff Report

I. Executive Summary

The SPAC is meeting to make a recommendation to the Commission regarding BPA 2-19. BPA 2-19 is a request by the Oakland Athletics to remove the Port Priority Use Area designation from Howard Terminal at the Port of Oakland.

As described further in Section III of this report, Assembly Bill 1191 (Bonta, 2019) requires BCDC to determine whether Howard Terminal is needed for Port Priority Use. BPA 2-19 will not involve consideration of the Oakland Waterfront Ballpark District Project itself.

To support the SPAC's discussion of the proposed amendment, this report includes a summary of the legal and policy framework the SPAC will use to make a recommendation to the Commission, a review of the Cargo Forecast and its implications for the need for Howard Terminal to remain in Port Priority Use, an assessment of the viability of the site for port operations, and analysis of other closely related topics including public access, sea level rise, and environmental justice.

The results of this analysis are briefly summarized below:

The Cargo Forecast. The Cargo Forecast provides forecasts to 2050 for the three major types of cargo moving through the Bay Area's seaports, which are containerized cargo, roll-on/roll off (Ro-Ro) cargo, and dry bulk cargo, as well as a high-level review of the capacity of Bay Area seaports to handle cargo growth and the places available for expansion. The Cargo Forecast includes Slow, Moderate, and Strong Growth scenarios as well as Low, Base, and High Productivity scenarios, to illustrate a range of possibilities about the future of Bay Area cargo growth. The Cargo Forecast is available at the following link: https://www.bcdc.ca.gov/seaport/2019-2050-Bay-Area-Seaport-Forecast.pdf.

Under the Moderate Growth scenario, Bay Area seaports are expected to be at or near capacity by 2050, and the Bay Area would need to activate 327 acres of additional space to meet demand. There are approximately 323 underutilized or dormant acres identified in the Cargo Forecast that could be used to meet demand, including Howard Terminal, leaving an estimated 4-acre deficit. Under slow cargo growth assumptions, the Bay Area will need about 98 acres more active terminal space by 2050, and under strong growth assumptions, the Bay Area will need substantially more seaport terminal space, about 753 more acres. A deficit in space available to accommodate growing regional cargo needs could increase pressure for Bay fill, even without the removal of the Port Priority Use area from Howard Terminal.

According to this analysis, Howard Terminal may be needed to meet Bay Area cargo growth needs, and the Cargo Forecast identifies Howard Terminal as a dormant or underutilized site that could potentially accommodate any of the three major types of cargo.

Viability and need for Howard Terminal as a marine terminal. Howard Terminal was last used for container cargo handling in 2014. At approximately 50 acres and with 42 feet of depth, Howard Terminal is small by current West Coast container terminal standards. Howard Terminal could accommodate most of the container vessels that called Oakland as of 2017. However, a proposed expansion of the Inner Harbor Turning Basin could truncate Howard Terminal's berth by half and reduce its acreage from 50 to 40 acres. If this occurs, Howard Terminal could accept few of the vessels projected to call at Oakland by 2050 without modifications. Even with a truncated berth, Howard Terminal could be used to handle Ro-Ro or dry bulk cargo. Reactivating Howard Terminal for cargo handling would require varying levels of investment. BCDC staff have inquired with the Port about the feasibility of Howard Terminal to handle all three types of cargo, but have received limited response to date, and this analysis is thus limited. See Appendix 1.

Viability and need for Howard Terminal for ancillary uses. From 2014 to present, Howard Terminal has been used for a mix of ancillary uses, including longshore worker training, truck parking and staging, container and chassis storage, cargo transloading, layberthing, and tug boat docking. In January 2022, the Port of Oakland announced plans to use 25 acres of Howard Terminal to operate an off-terminal and paved container yard equipped to move containers off chassis and store them for rapid pick-up as part of an effort to improve the flow of agricultural exports.

BCDC staff have requested the Port to provide information on where ancillary port services and uses would be relocated if Howard Terminal is removed from Port Priority Use, including whether there is additional room for such uses at the Port, or whether the uses would be relocated elsewhere. BCDC staff also asked the Port to clarify whether removing these uses would detract from the regional capability to meet the projected growth in cargo, as per General Policy #4 of the Seaport Plan. To date, the Port has not supplied BCDC with a response. See Appendix 1.

II. Background

A. Bay Plan Amendments 1-19 and 2-19

On January 17, 2019, the Commission voted to initiate two separate Bay Plan amendments that relate to the Seaport Plan. BPA 1-19 was initiated to undertake a general update of the Seaport Plan, and that work is ongoing.

BPA 2-19, the subject of this staff report, was initiated at the request of the Oakland Athletics to amend the Bay Plan and Seaport Plan to remove the Port Priority Use designation at Howard Terminal at the Port of Oakland, as shown on Bay Plan Map 5 as well as Table 10 and Figure 4 of the Seaport Plan. If approved, this amendment would be the first step for the Commission to consider a future permit application for construction of a ballpark and mixed-use development on the Howard Terminal site (the Oakland Waterfront Ballpark District Project). At this time, no permit application has yet been submitted to the Commission; however, the Oakland Athletics have presented at three BCDC Design Review Board meetings and an Engineering Criteria Review Board meeting, and have sought preliminary feedback from BCDC permit staff on the Project plans.

BPA 2-19 will not involve consideration of the Oakland Waterfront Ballpark District Project (Project) itself, its consistency with the Commission's laws and policies, or whether the Howard Terminal location is an appropriate site for that Project. Rather, BPA 2-19 is limited to considering whether the Port Priority Use Area designation should be removed from Howard Terminal on the basis of whether Howard Terminal is needed for port use.

B. Seaport Planning Advisory Committee

The SPAC is an advisory body to the Commission whose purpose is to provide expert advice on seaport-related matters. The SPAC currently consists of representatives from the five Bay Area ports (Port of Benicia, Port of Oakland, Port of Redwood City, Port of Richmond, and Port of San Francisco), BCDC Commissioners, the Metropolitan Transportation Commission/Association of Bay Area Governments (MTC/ABAG), the Marine Exchange of the San Francisco Bay Region, the California Department of Transportation, and Save the Bay. As an advisory body, the SPAC may vote on a recommendation regarding BPA 2-19, but the Commission will make the final determination as the ultimate decision maker with respect to any Bay Plan amendment.

C. The Bay Plan and the Seaport Plan

Section 66602 of the McAteer-Petris Act (Title 7.2 of the California Government Code) declares seaports to be among certain water-oriented land uses along the Bay shoreline that are essential to the public welfare of the Bay Area and requires the Bay Plan to provide for adequate and suitable locations for these uses to minimize the future need to fill the bay to create new sites for these uses.

The Bay Plan designates areas for various water-oriented priority land uses within and outside of the Commission's 100-foot Shoreline Band jurisdiction (areas that are 100 feet landward of the Bay jurisdiction, as statutorily defined), including sites designated for Port Priority Use. Future development proposed in Priority Use Areas that are within the Commission's jurisdiction must be consistent with policies in the Bay Plan related to those areas. Priority Use Area designations outside of the Commission's jurisdiction are advisory only. Boundaries for the Priority Use Areas within the shoreline band are established by the Commission in Resolution 16.

The Seaport Plan is an extension of the Bay Plan that contains more specific findings and policies governing port planning and development. As noted in the Bay Plan, there is not a singular port agency or authority responsible for coordinating the planning and development of the region's seaport terminals—unlike, for example, an agency like the Port Authority of New York and New Jersey. In the absence of a regional seaport plan to identify and designate the places best suited for cargo terminals and related uses, uncoordinated development of port facilities could lead to unnecessary Bay fill. The Bay Plan therefore incorporates by reference the Seaport Plan to minimize these risks and to coordinate the planning and development of Bay Area cargo terminals and Port Priority Use Areas.

Per Bay Plan Port Policy 1, the Seaport Plan provides for:

- The expansion and/or redevelopment of port facilities at Benicia, Oakland, Redwood City, Richmond, and San Francisco, as well as the development of new port facilities at Selby.[1]
- Further deepening of shipping channels to accommodate expected growth in ship size and improved terminal productivity.
- The maintenance of up-to-date cargo forecasts and existing cargo handling capability estimates to guide the permitting of terminals.
- Development of port facilities with the least potential adverse environmental impacts while still providing for reasonable terminal development.

BCDC uses the Seaport Plan in making port-related decisions on permit applications, federal consistency determinations, and related matters. The Seaport Plan also provides land use guidance to local governments for planning port areas.

The Seaport Plan identifies the following goals:

- Ensure continuation of the San Francisco Bay port system as a major world port and contributor to the economic vitality of the San Francisco Bay region;
- Maintain or improve the environmental quality of San Francisco Bay and its environs;
- Provide for efficient use of finite physical and fiscal resources consumed in developing and operating marine terminals through 2020;
- Provide for integrated and improved surface transportation facilities between San Francisco Bay ports and terminals and other regional transportation systems; and
- Reserve sufficient shoreline areas to accommodate future growth in maritime cargo, thereby minimizing the need for new Bay fill for port development.

The Bay Plan acknowledges that some filling and dredging will be required to provide for necessary port expansion, but any permitted fill or dredging should be in accord with the Seaport Plan.

D. Port Priority Use Areas

Consistent with the Bay Plan, the Seaport Plan designates areas determined necessary for future port development as Port Priority Use Areas to reserve them for cargo handling or related uses. Port Priority Use Areas are reserved for regional maritime port

[1] Note that the Seaport Plan also includes provisions for the Concord Naval Weapons Reservation, which is not named in Bay Plan Policy 1.

use. Uses compatible within the Port Priority Use Area designation include marine terminals and directly related ancillary activities such as container freight stations, transit sheds and other temporary storage, ship repairing, support transportation uses including trucking and railroad yards, freight forwarders, government offices related to port activity, chandlers and marine services. In accordance with the Bay Plan and Seaport Plan, other uses, especially public access and public and commercial recreational development, should also be permissible uses, provided they do not significantly impair the efficient utilization of the port area.

Within Port Priority Use Areas, sites for marine terminals are identified and are reserved specifically for cargo handling operations. Using a cargo forecast, the Seaport Plan assigns a cargo type and amount that each existing and future planned marine terminal should be able to accommodate over the planning horizon.

III. Framework for SPAC recommendation and Commission decision

A. Consistency of the Waterfront Ballpark District Project with the McAteer-Petris Act, the San Francisco Bay Plan, and the Seaport Plan

The Waterfront Ballpark District project (Project) being proposed by the Oakland Athletics would be on lands partially subject to BCDC's permit jurisdiction. Before BCDC could authorize a permit for development of such a Project, the Commission must find that the Project is consistent with the applicable requirements of the McAteer-Petris Act, the Bay Plan, and the Seaport Plan. Because the Project, as BCDC staff currently understands it (acknowledging that no permit application has yet been submitted for the Project), proposes a range of non-port uses for properties currently designated for Port Priority Use in both the Bay Plan and Seaport Plan, the Project would conflict with applicable BCDC policies for Port Priority Use Areas. Ports Policy No. 3 states, in part, that "Port Priority Use Areas should be protected for marine terminals and directly-related ancillary activities," and that other uses are permissible "only if they do not significantly impair the efficient utilization of the port area."

Therefore, the anticipated Project would not be consistent with the Bay Plan unless the boundaries of the Oakland Port Priority Use Area on Bay Plan Map 5 and in Table 10 and Figure 4 of the Seaport Plan are revised to remove the Port Priority Use Area designation from the Howard Terminal Project site. In other words, prior removal of the Port Priority Use designation (*i.e.*, the current proposed Bay Plan amendment) from, at a minimum, the portion of the site within the shoreline band, would be a prerequisite for the Project as currently proposed to obtain a BCDC permit.

Several relevant Bay Plan and Seaport Plan policies are analyzed in this BCDC staff report. Seaport Plan General Policy 4 is especially relevant because it establishes the standard for removal of Port Priority Use Areas. Policy 4 states:

> Deletions of the port priority use and marine terminal designations from this plan should not occur unless the person or organization requesting the deletion can demonstrate to the satisfaction of the Seaport Planning Advisory Committee

> that the deletion does not detract from the regional capability to meet the projected growth in cargo. Requests for deletions of port priority or marine terminal designations should include a justification for the proposed deletion, and should demonstrate that the cargo forecast can be met with existing terminals.

Note that the SPAC's recommendation is advisory to the Commission. The Commission will make the determination on BPA 2-19, as the ultimate decisionmaker with respect to any Bay Plan Amendment.

B. Assembly Bill 1191 (Bonta, 2019)

Assembly Bill (AB) 1191, the *Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act*, was enacted in October 2019. AB 1191 authorizes the Commission and the State Lands Commission (SLC) to take certain actions related to the proposed development of the Project under this special legislation.

The provisions of this law applicable to the Commission include those for decisions related to removal of the Port Priority Use Area and for any subsequent BCDC permit application for the Project (termed the "Oakland Sports and Mixed-Use Project" in AB 1191). Of particular importance to BPA 2-19, Section 8(a) of AB 1191 states:

> BCDC shall determine by February 28, 2020, or 140 days after the certification by the City of a project-level environmental impact report for the Oakland Sports and Mixed-Use Project, whichever is later, whether the Howard Terminal property and adjacent areas designated for port priority use, or portions of them, are no longer required for port priority use and shall be deemed free of the port priority use area designation for purposes of the Oakland Sports and Mixed-Use Project, or whether these areas are needed for port priority use and should continue in port priority use designation.

In addition to this 140-day requirement, Section 8(b) of AB 1191 specifies that if the Commission approves BPA 2-19, and the Port and the Oakland Athletics have not entered into a binding agreement by January 1, 2025, that allows for the construction of the Project, the Port Priority Use designation will automatically be reinstated on the Howard Terminal property as if it had not been deleted.

Finally, if BPA 2-19 is approved, and the Oakland Athletics continue to move forward with the Waterfront Ballpark District Project as currently proposed, then the Project will be required to obtain a BCDC Major Permit. Section 9 of AB 1191 specifies a set of conditions under which the Commission may approve a permit. Section 9 of AB 1191 is outside of the purview of BPA 2-19.

Aside from the provisions in AB 1191 summarized above, the bill does not otherwise limit the authority or discretion of the Commission to consider amendments to the Seaport Plan or the Bay Plan, or to approve or deny permits for those aspects of the

Oakland Sports and Mixed-Use Project described in the act that are within the Commission's jurisdiction in a manner consistent with the McAteer-Petris Act and the Bay Plan.

In addition, AB 1191 authorizes the SLC to approve an exchange at the Howard Terminal property (an exchange is defined as all or any of a boundary line agreement, title settlement, trust exchange, or quitclaim at the Howard Terminal) and ultimately to approve a Ballpark and Public Lands Development, if certain terms and conditions described in the bill are met.

To answer the question of whether Howard Terminal is needed for Port Priority Use, this staff report looks to the Cargo Forecast and all relevant existing Seaport Plan and Bay Plan policies. If the BPA (or some variation of it) is approved, the Oakland Athletics, perhaps in combination with the Port and/or City of Oakland, can be expected to apply for a major BCDC permit and the ballpark proposal would be considered pursuant to the BCDC permitting process, as modified by AB 1191.

C. Relationship between BPA 1-19 and BPA 2-19

BCDC staff are working separately on a general update to the Seaport Plan (BPA 1-19). As part of this process, staff anticipate revising a number of the Plan's policies as well as incorporating updated information from a new Cargo Forecast that was approved by the SPAC in May 2020. Because the cargo forecast within the existing Seaport Plan only projected forecast numbers until 2020, that forecast is moot and outdated for purposes of BPA 1-19 and this BPA 2-19, and necessitated the development of the new Cargo Forecast.

The amendment request to remove the Port Priority Use Area from Howard Terminal (BPA 2-19) was submitted under, and will be evaluated in relation to, existing Seaport Plan policies—not any updated or modified policies that might result from BPA 1-19 if it is adopted by the Commission at a future date.

However, because the existing cargo forecast is outdated, the Commission must necessarily rely on new information (the new Cargo Forecast and any other appropriate information submitted to the Commission for consideration) in evaluating BPA 2-19 in order to determine whether removal of the Port Priority Use designation will detract from regional capability to meet projected cargo growth as required by Seaport Plan General Policy 4.

IV. BPA 2-19 process

BCDC has hosted five SPAC meetings to date related to BPA 2-19 and BPA 1-19 (the Seaport Plan update). An array of port-related stakeholders participated in the SPAC meetings and public comments were recorded as part of this planning process. The first three meetings focused on developing and finalizing the Cargo Forecast, discussed in depth below. The second two meetings focused on analyzing requests for changes to Port Priority Use Areas being submitted by the five Bay Area ports, as well as consideration of policy issues that will

be included in the updated Seaport Plan, which will come before the Commission for consideration later in 2022. Meeting materials for the previous five SPAC meetings are available at the following link: https://www.bcdc.ca.gov/seaport/meetings.html.

Another BCDC advisory body, the Design Review Board (DRB), conducted two public meetings (October 7, 2020 and April 5, 2021) to review the design aspects of the Project such as transportation, public access, recreation, and open space. Updates of the BPA 2-19 planning process and its alignment with the pre-application process for a major permit were included as part of the DRB review and public comments were recorded for both meetings.

Following the completion of the Cargo Forecast and preliminary analysis of BPA 2-19, BCDC staff engaged in ongoing discussions with the Applicant (the Oakland Athletics), the Port of Oakland, and City of Oakland between September 2021 and the present, to obtain additional justification for the proposed deletion. BCDC staff met individually with the Applicant, the Port of Oakland, and the City of Oakland, throughout early to mid-September 2021. BCDC staff raised a number of questions relating to the potential need of Howard Terminal for Port Priority Use and asked the Applicant to work with the Port and the City to respond. These meetings were summarized in email on September 14, 2021.

The Port responded on October 7, 2021, providing some additional information but not addressing the major issues raised in BCDC staff's email. On October 21, 2021, BCDC replied, reiterating the outstanding substantive issues, and calling for continued collaboration to address them.

On November 17, 2021, BCDC executive leadership and staff met with the Port of Oakland executive leadership and staff, and Port staff agreed that it would provide additional information and analysis on behalf of the Oakland Athletics to support the application for BPA 2-19.

Not having received any further information from the Port, BCDC staff nonetheless further met with Port of Oakland staff on December 15, 2021, January 11, 2022, and January 21, 2022, to coordinate and provide the Port with further direction on the information necessary for BCDC staff to formulate a recommendation with respect to the BPA application.

The Oakland Athletics submitted a memorandum with information provided by the Port on February 4, 2022. However, BCDC staff responded on February 18, 2022, indicating that the information submitted did not fully address BCDC staff's prior questions about whether Howard Terminal is needed for Port Priority Use, and asked the Port of Oakland to respond by February 25, 2022. The Port of Oakland requested an extension to March 4, 2022. BCDC staff granted this extension but noted that staff would not have time to respond or analyze the Port's response in this staff report.

The various written communications described above can be found in Appendix 1.

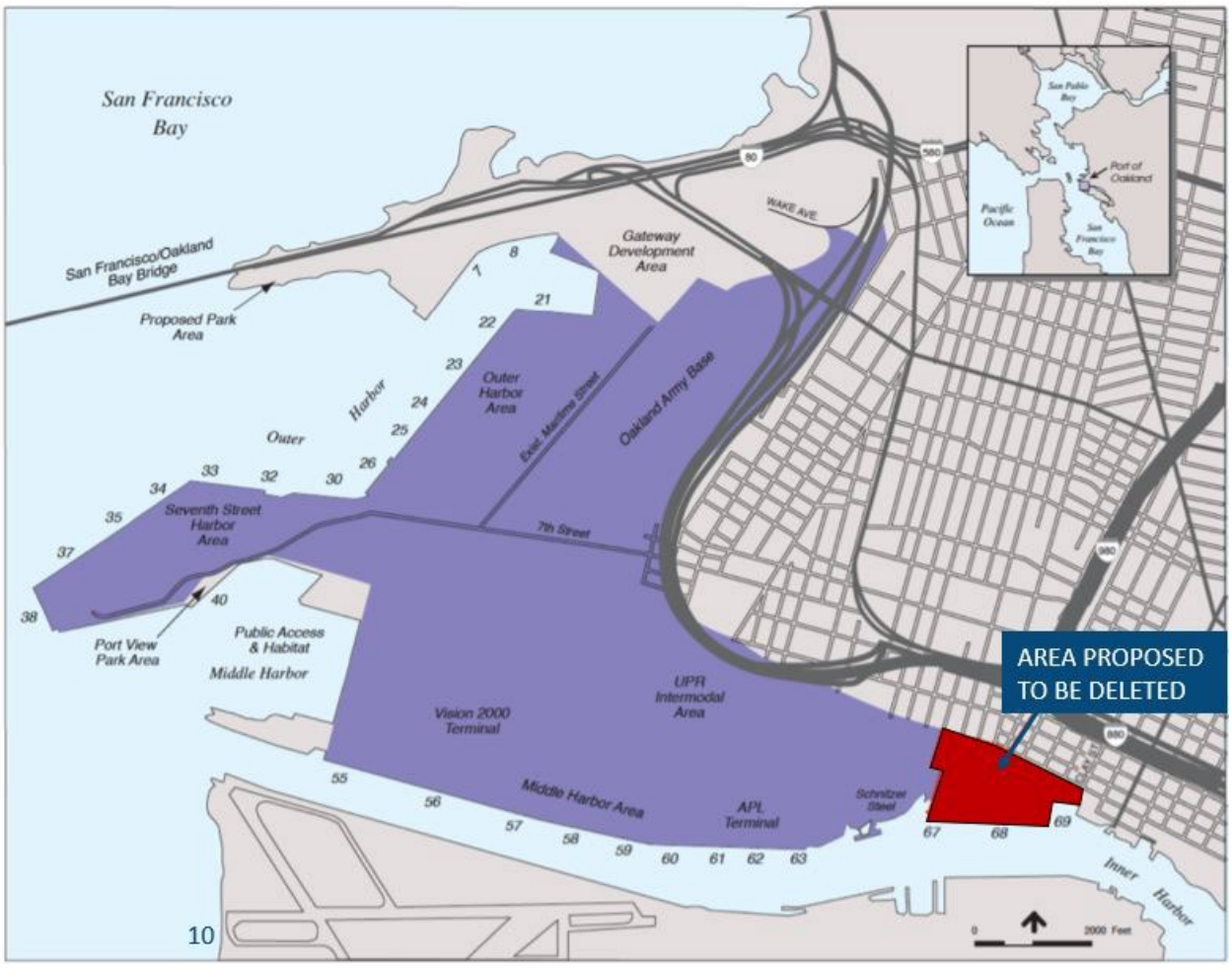
V. Howard Terminal Site overview

A. Site overview

Howard Terminal is an approximately 50-acre site located in Oakland's Inner Harbor on the Alameda Estuary. It sits east of Schnitzer Steel and west of the Oakland Ferry Terminal and Jack London Square. The proposed removal of the Port Priority Use designation encompasses an approximately 57-acre area that includes Howard Terminal and properties owned by Vistra and Pacific Gas & Electric.

Figure 1 shows the Oakland Port Priority Use Area in purple, with Howard Terminal illustrated in red. The Oakland Port Priority Use Area includes most of the lands owned by the Port of Oakland as well as Schnitzer Steel, which is privately owned and not part of the Port of Oakland.

Figure 1: Howard Terminal and the Oakland Port Priority Use Area



Howard Terminal began operations importing coal and exporting grain in about 1900. The terminal operated independently until purchased by the Port of Oakland in 1978. Existing "finger" berths were filled in to develop a more modern terminal. BCDC Permit No. 1978.013.00 allowed demolition of the Grove Street Pier and the construction of the majority of the current wharf, resulting in approximately 10.3 acres of Bay fill. Subsequently, in 1995 the Commission issued BCDC Permit No. 1994.008.00, which permitted repairs to sections of wharf and expansion of its footprint, resulting in approximately 3.8 acres of fill. These permits allowed for the development of Howard Terminal in its current footprint. However, all areas filled subject to a BCDC permit remain within the Commission's "Bay jurisdiction." Under the Port's ownership, Howard Terminal was rebuilt as a combination container and break-bulk terminal with two cargo sheds. The cargo sheds were removed in 2000, at which point Howard Terminal assumed its present configuration, shown in Figure 2.

Figure 2: Howard Terminal (2018 imagery)

The existing site has a 1,946-foot-long berth with a 70-foot dolphin (dolphins are independent structures that can serve as a mooring point, effectively extending the length of the terminal's berth). The site has four container cranes (1 post-Panamax, and 3 Panamax) and approximately 42 feet of depth in the adjacent navigation channel.

The Seaport Plan designates Howard Terminal as a two-berth container terminal. Between 2005 and 2013, Howard Terminal was used by Matson to support its domestic container service. In 2014, Matson moved to the former APL terminal at berths 60-63.

Since then, the terminal has been used for a combination of ancillary uses, including longshore worker training, truck parking and staging, container and chassis storage, cargo transloading, layberthing, and tugboat docking.

B. Oakland Waterfront Ballpark District proposal

As previously stated, consideration of the Project being proposed by the Oakland Athletics is outside of the scope of BPA 2-19, which only concerns whether Howard Terminal is needed for Port Priority Use.

However, the following background information is provided as a basic reference. The Project consists of two proposed development scenarios that depend on a potential expansion of the Inner Harbor Turning Basin, which is explained further below. Under the proposed Baseline Project Scenario, the entire 55-acre site would be developed, including 18 development blocks and approximately 18.3 acres of public open space, including a 10.3-acre waterfront park. Under the alternative proposed Maritime Reservation Scenario, the footprint of the development would be reduced to 45 acres due to the removal of a portion of the terminal for the proposed Inner Harbor Turning Basin Widening Project. The waterfront park proposed for the Project would subsequently be reduced to approximately 6.9 acres. The development program would remain the same in either scenario. Both scenarios include the proposed construction of an approximately 8-acre major league ballpark with the capacity of up to 35,000 persons.

C. Inner Harbor Turning Basin Widening

The U.S. Army Corps of Engineers San Francisco District (USACE), in collaboration with the Port of Oakland as the non-federal sponsor, are currently studying the feasibility of widening the Inner Harbor Turning Basin, which could involve removing up to 10 acres of Howard Terminal, to accommodate the increasing sizes of container ships calling at the Port. USACE released a Draft Integrated Feasibility Report and National Environmental Policy Act Environmental Assessment, as well as a draft Finding of No Significant Impact, in December, 2021. The project website is available at the following link: https://www.spn.usace.army.mil/Missions/Projects-and-Programs/Projects-A-Z/Oakland-Harbor-Turning-Basins-Widening/.

As described in the May 2019 Exclusive Negotiation Term Sheet between the City of Oakland and the Oakland Athletics (available at the following link: https://www.portofoakland.com/wp-content/uploads/Howard-Terminal-microsite-Term-sheet.pdf), the Port has reserved certain portions of the Project site for this potential expansion. If the Port exercises those rights, the Development Agreement would terminate as to those lands reclaimed by the Port. The Cargo Forecast therefore accounts for the possibility that Howard Terminal could be reduced from 50 to 40 acres to accommodate the turning basin project.

A more in-depth assessment of the Howard Terminal site, including considerations about the feasibility of Howard Terminal to be used as an active marine terminal or for other needed port uses, with and without the expanded turning basin, is included in Sections VI(B) and VI(C).

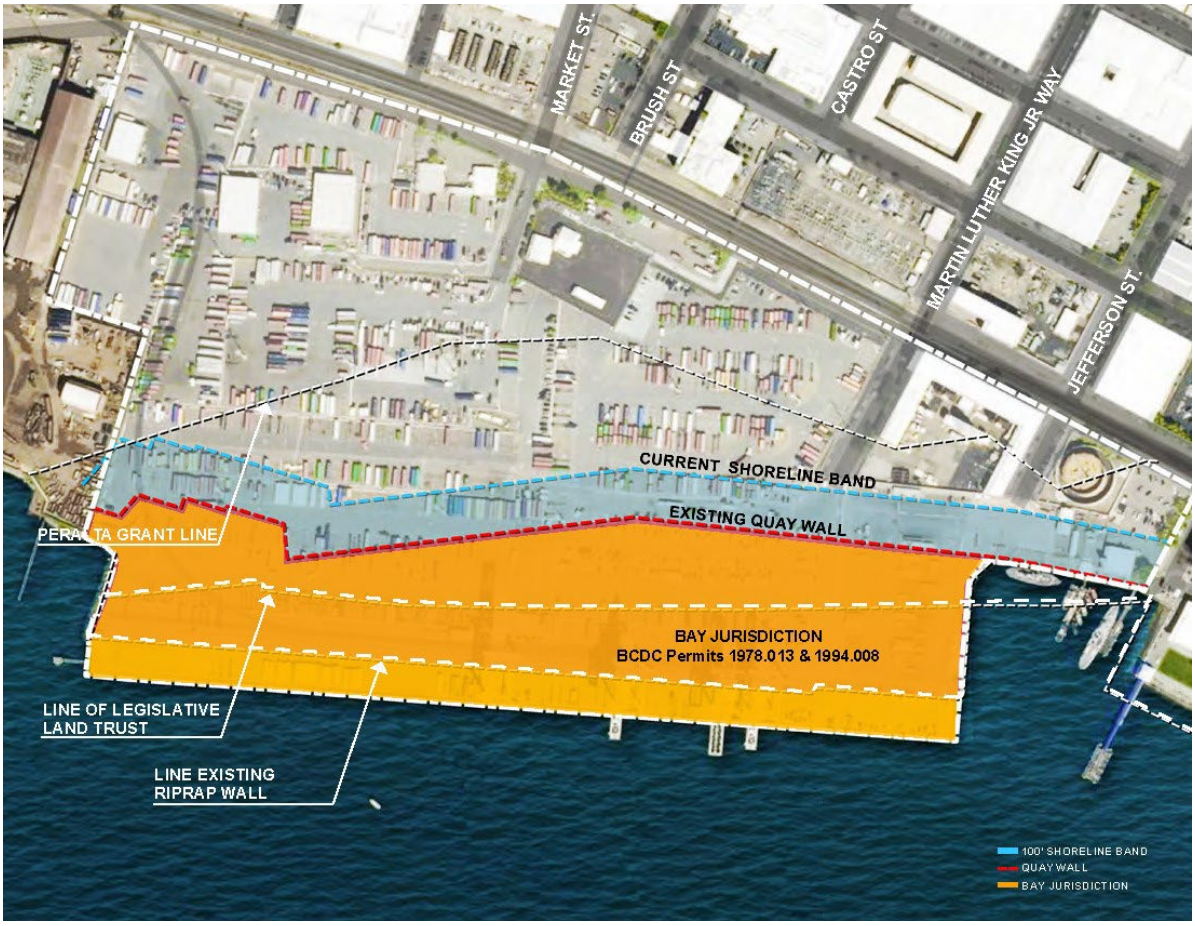
D. BCDC site jurisdiction

Section 66602 of the McAteer-Petris Act (Title 7.2 of the California Government Code) declares seaports to be among certain water-oriented land uses along the Bay shoreline that are essential to the public welfare of the Bay Area and requires the Bay Plan to provide for adequate and suitable locations for these uses in order to minimize the future need to use Bay fill to create new sites for these uses. Thus, the Bay Plan, as modified by Resolution 16, designates areas for various water-oriented priority land uses within its shoreline band jurisdiction (areas that are 100 feet landward of the Commission's Bay jurisdiction), including sites designated for port priority use.

As the current extent of the wharf of Howard Terminal was not constructed until the late 1970's through the 1990's, much of the wharf is located within the Commission's Bay jurisdiction. In accordance with Section 10710 of the Commission's regulations, "Areas once subject to Commission jurisdiction remain subject to that same jurisdiction even if filled or otherwise artificially altered whether pursuant to a Commission permit or not".

BCDC's jurisdiction is illustrated in Figure 3. The Port Priority Use Area, as described in the San Francisco Bay Plan Map 5 and the Seaport Plan, extends upland beyond the Commission's McAteer-Petris Act jurisdiction both for advisory purposes and for purposes of federal consistency review under the Commission's certified Coastal Management Program pursuant to the federal Coastal Zone Management Act (1972).

Figure 3: BCDC Bay and Shoreline Band jurisdiction at Howard Terminal



E. Land Use context

The Oakland General Plan Land Use and Transportation Element (1998) designates the Oakland Port Priority Use Area primarily as General Industry and Transportation, with some areas of Business Mix along the Port's border with the rest of the city. The City's General Industry and Transportation designation is intended to promote Oakland's role as an international transportation hub and allows for uses that may have the potential to create off-site impacts such as noise, light/glare, truck traffic, and odor. The City is currently preparing to launch an update to the General Plan.

A small portion of the site carries an Estuary Policy Plan (EPP) designation. The plan was a joint effort between the City and Port to enhance the city's waterfront and maximize access. The portion of the site in the EPP is designated Retail Dining Entertainment 1 and is part of the Jack London District.

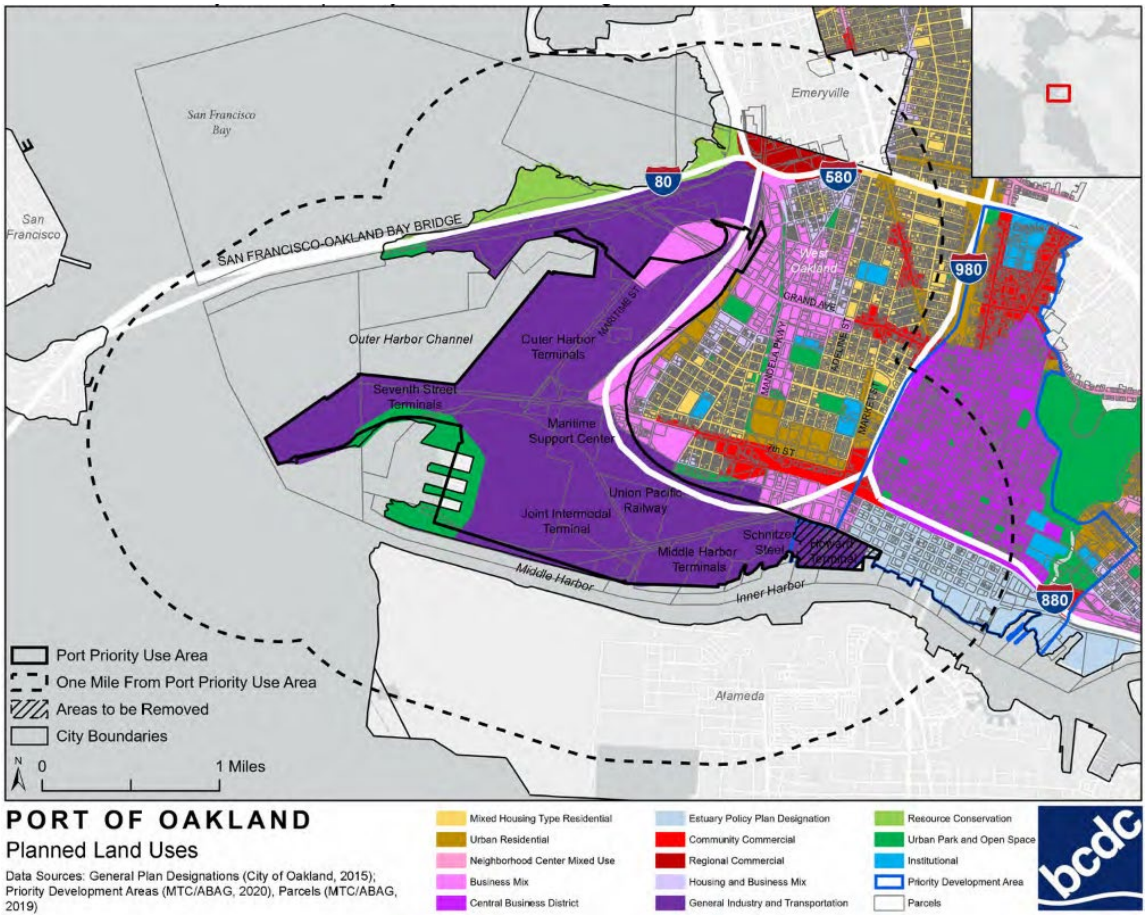
The site is also part of a Plan Bay Area 2040 Priority Development Area (PDA). It is included in the Downtown and Jack London Square PDA, which is characterized as center of culture, night life, business, innovation, shopping and civic life in Oakland. In

the PDA, development projects tied to key Oakland BART stations along the Broadway corridor are anticipated to support new housing, commercial uses, and open space. Howard Terminal was included in this PDA because it is considered in the Draft Oakland Downtown Specific Plan. While Howard Terminal is outside of the Downtown Specific Plan area, the potential stadium Project could have an influence on downtown development, and policies in the draft plan address this possibility. In general, the PDA designation on the site describes uses inconsistent with the Bay Plan and Seaport Plan Port Priority Use Area designation. Removing the Port Priority Use Area designation such that the proposed Waterfront Ballpark District could eventually be developed would eliminate this inconsistency.

Removing the Port Priority Use designation from the site would not itself conflict with either the City's General Plan or the EPP. The Project would not be consistent with the City's current land use designations, but the approval process for the proposed development would include adoption of a General Plan amendment for the site, establishing a new Waterfront Planned Development Zoning District.

Surrounding land uses include the Bay Bridge and Gateway Development Area (formerly part of the Oakland Army Base) to the north, the neighborhood of West Oakland to the east, and Jack London Square also to the east. Maintaining existing Port Priority Use designations would not cause any new incompatibilities between the Port Priority Use areas and surrounding uses. Existing land use conflicts between port uses and the West Oakland community, such as health impacts arising from poor air quality and traffic safety impacts from trucks routing through local streets, have been well documented by community advocates and raised in planning efforts with the Port of Oakland and with the Bay Area Air Quality Management District (BAAQMD). Existing surrounding land uses are illustrated in Figure 4.

Figure 4: Existing Surrounding Land Uses



F. Previous Oakland Port Priority Use Area removal

Since 2000, the Commission has approved the removal of Port Priority Use area designations a number of times, with the largest removals occurring in 2000 and 2002. In 2000, the Commission approved a large-scale removal of a Port Priority Use Area designation at the Port of Oakland to accommodate the redevelopment of the Oakland Army Base. The Commission approved the amendment (BPA 4-00) to the Seaport Plan and Bay Plan to remove the Port Priority Use designations from approximately 189.4 acres of the Oakland Army Base (Army Base), Army Reserve property and a small portion of the Port of Oakland (Port). An additional 184 acres was transferred from the Oakland Army Base to the Port of Oakland at the time to provide for additional capacity at the Port. The property removed from Port Priority Use designation was intended to be developed with a mixture of commercial, office, light industrial uses, and public access area. During the amendment process, 15 acres of Port Priority Use area was added to provide for truck parking and ancillary uses. This 15-acre area was reconfigured and relocated by an additional amendment in 2006 based on changing needs at the Port of Oakland (BPA 3-06).

In 2002, the Commission approved removal of 31-acres of Port Priority Use designation at the former break bulk facility at the Ninth Avenue Terminal located between Clinton Basin and Brooklyn Basin along the Oakland-Alameda Estuary as part of a series of revisions to Port Priority Use areas along the Bay (BPA 3-02). The facility was found to be in disrepair and no longer suitable for Port use, and was eventually redeveloped into the Brooklyn Basin project pursuant to BCDC Permit No. 2006.007.03.

G. Related planning process: Port of Oakland Seaport Plan

In 2021, the Port of Oakland initiated a process to develop a Port of Oakland Seaport Plan (a separate initiative from BCDC's Seaport Plan) to guide the Port's future growth. The Port convened a "seaport stakeholder roundtable" group consisting of local government, regulatory agencies, truckers, labor, terminal/rail operators, and community groups, beginning in July 2021, to provide feedback on the plan's development. BCDC was included as a member of this stakeholder group, which has met seven times to date. This initiative includes a number of concurrent studies and projects, including a maritime market assessment, a land use study, a transportation study, a truck parking study, an economic impact study, a utility condition assessment, and air quality and sea level rise studies. The final plan is not anticipated to be released until later in 2022, and the preliminary findings of these studies have not yet been completed or made available to the stakeholder group. Discussion of Howard Terminal has been limited to issues being raised by the stakeholders, and Port staff have referred stakeholders to the broader outreach process being undertaken jointly by the Oakland Athletics, the City, and the Port. The Port's presentations and meeting video is available on their website at the following link: https://www.portofoakland.com/stakeholder-engagement/seaport-stakeholder-roundtable/

VI. Consistency with Bay Plan and Seaport Plan Policies

The following sections summarize major issues relevant to the question of whether Howard Terminal is needed for Port Priority Use. This analysis was informed by the Cargo Forecast, information that BCDC staff received from the Oakland Athletics and the Port of Oakland, and BCDC staff's examination of relevant Seaport Plan and Bay Plan policies.

A. The Cargo Forecast

1. Background

The Port Priority Use Area findings and policies included in the Seaport Plan are underpinned by a long-range Cargo Forecast that guides decision making to help realize the Plan's goals for coordinated development and minimizing the need for Bay fill. As described above, Seaport Plan General Policy 4 establishes the standard for removal of port priority use areas using the Cargo Forecast. Policy 4 states:

> Deletions of the port priority use and marine terminal designations from this plan should not occur unless the person or organization requesting the deletion can demonstrate to the satisfaction of the Seaport Planning Advisory Committee that the deletion does not detract from the regional capability to

meet the projected growth in cargo. Requests for deletions of port priority or marine terminal designations should include a justification for the proposed deletion, and should demonstrate that the cargo forecast can be met with existing terminals.

In anticipation of the previous Cargo Forecast's expiration in 2020, BCDC staff began to work with the Tioga Group and Hackett Associates to develop a new Cargo Forecast in 2019. This work was done under the guidance of the SPAC over the course of three public meetings, with individual ports also providing direct feedback.

After the release of the first draft of the Cargo Forecast in June 2019, the applicant for BPA 2-19, the Oakland Athletics, commissioned a separate consultant, Mercator International, to conduct a review of the forecast as it pertained to Howard Terminal that used a different methodology and set of assumptions than the Tioga forecast, with differing results. The Mercator report, "Expected Demand for Howard Terminal as a Cargo Handling Facility", accepted the draft Cargo Forecast's cargo demand projections but argued that future demand could be met at new and existing terminals without the use of Howard Terminal.

Consequently, the SPAC directed BCDC staff to further review the Tioga Cargo Forecast as well as the Mercator report. BCDC staff sent both reports for independent peer review, conducted interviews with terminal operators at the Port of Oakland, and conducted additional staff analysis, as part of an extensive review process. The SPAC voted 9-0-1 to approve the Cargo Forecast for planning purposes in May 2020. The December 2019 and May 2020 staff reports to the SPAC contain more details about the process of developing the Cargo Forecast and assessing the Cargo Forecast and Mercator report, and are available at the following link: https://www.bcdc.ca.gov/seaport/meetings.html.

2. Cargo Forecast summary

The Cargo Forecast provides forecasts to 2050 for the three major types of cargo moving through the Bay Area's seaports, which are containerized cargo, roll-on/roll off (Ro-Ro) cargo, and dry bulk cargo. The Cargo Forecast also provides a high-level review of marine terminal capacity and expansion potential to meet future needs. The full Cargo Forecast is available at the following link: https://www.bcdc.ca.gov/seaport/2019-2050-Bay-Area-Seaport-Forecast.pdf.

Prior to developing the new Cargo Forecast, the container forecast and terminal capacity estimates were last updated in 2009, and the bulk forecast was last updated in 2011. While some of the trends documented in those updates have continued, there have since been numerous shifts in both economic development and trade conditions, necessitating a new Cargo Forecast to inform both BPA 1-19 and BPA 2-19. The 2009 containerized forecast reflected widespread expectations for a strong recovery from the 2008 – 2009 recession. Post-recovery trade grew more slowly than anticipated at that time. Ro-Ro cargo also recovered more slowly than expected

from the recession, but nearly caught up to the 2011 forecast by 2018. Dry bulk cargoes, which have long been dominated by construction industry needs, generally aligned with, or exceeded the 2011 forecast predictions.

Table 1 shows the commodities moving through Bay Area ports as of early 2019. Levin Richmond is a private multi-purpose port facility adjacent to the Port of Richmond. Schnitzer Steel is a private terminal within the Oakland Harbor but not part of the Port of Oakland. Both of those private facilities are included in the port priority use areas along with the five ports.

The composition of San Francisco Bay Area cargo flows has changed over time and will continue to shift in response to consumer demand, trade conditions, and competition with other ports.

Table 1: Current Bay Area Cargo Flows

Commodity	*Port of Oakland*	*Port of Richmond*	*Port of Benicia*	*Port of Redwood City*	*Port of San Francisco*	*Levin Richmond (private)*	*Others (private)*
Containerized Imports	*X*	-	-	-	-	-	-
Containerized Exports	*X*	-	-	-	-	-	-
Containerized Domestic IB	*X*	-	-	-	-	-	-
Containerized Domestic OB	*X*	-	-	-	-	-	-
Import Autos	-	*X*	*X*	-	*X*	-	-
Export Autos	-	*X*	*X*	-	*X*	-	-
Export Scrap Metal	-	-	-	*X*	-	*X*	*X*
Import Veg Oils	-	*X*	-	-	-	-	-
Import Chemicals	-	-	-	-	-	-	*X*
Import Gypsum	-	-	-	*X*	-	-	*X*

Commodity	*Port of Oakland*	*Port of Richmond*	*Port of Benicia*	*Port of Redwood City*	*Port of San Francisco*	*Levin Richmond (private)*	*Others (private)*
Export Pet Coke	-	-	*X*	-	-	*X*	-
Export Coal	-	-	-	-	-	*X*	-
Import Sand and Gravel	-	-	-	*X*	*X*	*X*	*X*
Harvested Bay Sand	-	-	-	-	*X*	-	-
Import Slag	-	-	-	*X*	-	-	-
Import Bauxite	-	-	-	*X*	-	-	-

a. Methodology: Growth and Productivity Scenarios

In contrast to high-level econometric forecasts used for previous updates to the Seaport Plan, the new Cargo Forecast was produced using a cargo-specific and commodity-specific methodology. This approach accounts for issues specific to the Bay Area that will affect the flows of different kinds of cargo in addition to broader economic and trade factors.

For each of the major types of cargo (container, Ro-Ro, and dry bulk), the Cargo Forecast includes three different growth scenarios and three different productivity scenarios. Growth refers to the projections about the *volume* of cargo. Productivity refers to the *efficiency* that ports move that cargo. Combined, the growth and productivity scenarios account for a wide range of future possibilities for cargo movement in the Bay Area.

The three scenarios for cargo *growth* through 2050 are called Slow Growth, Moderate Growth, and Strong Growth. Each scenario accounts for different factors that could impact growth, from broad trends to port-specific considerations. An example of a broad trend is slower or faster population growth in the U.S. An example of a port-specific consideration is the positive

impact on refrigerated container trade due to the development of the Cool Port Facility at the Port of Oakland. In this way, the Cargo Forecast captures dozens of different kinds of variables in three growth scenarios.

Similarly, the three *productivity* scenarios are highly specific to the type of cargo being handled. The three productivity scenarios for each type of cargo are shown in Table 2. Because the Cargo Forecast includes a breadth of productivity scenarios with varying terminology, this analysis uses the overall term “Base Productivity” to refer to container High Productivity, Ro-Ro Base Case

Productivity, and dry bulk Moderate Growth Productivity—the middle scenario for each type of cargo.

Table 2: Productivity Scenarios

BCDC Terminology	*Container Productivity (TEU/Acre)*	*Ro-Ro Productivity (Unit/Acre)*	*Dry Bulk Productivity (Annual Metric Tons/Acre)*
Low Productivity	**Conventional** terminals include wheeled, stacked, and mixed terminals, including all existing Oakland terminals. These terminals may include some aspects of automation such as the use of optical character recognition (OCR) at entry gates, but all container operations are performed with manually operated equipment.	**Low Productivity** is a scenario in which the number of units handled per acre would decrease due to a higher mix of larger vehicles such as SUVs, trucks, and double-cab trucks.	**Slow Growth Productivity**, measured by annual metric tons per acre, anticipates a future 40% increase over the 2018 average.
Base Productivity	**High Productivity** includes "semi-automated" or "Auto-strad" terminals, both of which can have higher throughput capacity than conventional terminals but are not completely automated.	**Base Case Productivity** is a scenario that would assume a similar mix of vehicles sizes to 2018 proportions, including the mix of imports and exports	**Moderate Growth Productivity** anticipates a future 101% increase over the 2018 average.

BCDC Terminology	*Container Productivity (TEU/Acre)*	*Ro-Ro Productivity (Unit/Acre)*	*Dry Bulk Productivity (Annual Metric Tons/Acre)*
High Productivity	**Complete automation** terminals are more highly automated, especially in the container yard. Automation on this scale typically requires building a new terminal or completely replacing an existing terminal, necessitating heavy capital investment and a long development time.	**High Productivity** is a scenario in which the number of units handled per acre would increase due to a higher mix of more compact cars or compact SUVs and reducing average import dwell time.	**Strong Growth Productivity** anticipates a future 159% increase over the 2018 average. This progression represents the terminals becoming more productive as needed either by introducing denser storage or by moving the product through the terminal and out to the customer faster.

Analysis conducted by BCDC staff for previous SPAC staff reports focused on the Moderate Growth scenario with Base Productivity for all three cargo types. Attempting to meet the severe capacity shortages projected to result from the strong growth scenarios would require immense, and perhaps unavailable, capital and land resources that may not be warranted by actual growth. Meeting only the slow growth projections could leave the Bay Area vulnerable to major capacity shortfalls if actual growth is greater and available land has been shifted to other uses. Using the Base Productivity scenarios likewise reduces the risk of capacity shortfalls if high productivity assumptions are not met in practice, or of excess capacity if low productivity assumptions are exceeded.

The following sections provide a high-level summary of each of the three major cargo types and an analysis of cargo growth versus terminal capacity. After these summaries, there is an analysis of the implications for Howard Terminal.

b. Containerized cargo growth

Cargo that is not moved in bulk or Ro-Ro vehicle service typically moves in international containers. Container volumes and capacities are measured in "twenty-foot equivalent units" (TEU). A 20-foot container is one TEU. Several Bay Area seaports have handled containerized cargo in the past, including the Port of San Francisco, the Port of Richmond, and the Port of Oakland. Mirroring broader

trends, the container shipping industry in the Bay Area region has consolidated. The Port of Oakland currently handles more than 99 percent of the containerized goods moving through Northern California.

The previous containerized cargo forecasts prepared for BCDC were developed by Tioga in 2009 to assist BCDC in evaluating the proposed use of Richmond's Port Potrero site for Ro-Ro cargo rather than for containers. That forecast was prepared toward the end of the 2008-2009 recession and reflected widespread expectations for a relatively strong recovery. Post-recovery trade growth deviated from those expectations, and cargo has grown more slowly than expected.

The international TEU forecasts are driven by projections of economic growth developed by Moody's and Caltrans. The growth scenarios also account for factors such as trade disputes, the impact of new port-specific facilities on trade, and new "first call" vessel services.

The growth rates in the Moderate Growth case also serve as the basis of the forecast in the Slow Growth and Strong Growth scenarios, but these are modified to represent the combination of variables that may affect container volumes in the long term. Factors differentiated in the Slow Growth and Strong Growth scenarios include:

- Slower/faster population growth in the U.S.
- Slower/faster economic growth in the U.S.
- Major infrastructure investment by the U.S. Government.
- Lower value of the U.S. dollar resulting in increased export growth.
- High value of the U.S. dollar resulting in decreased export growth.
- Changes in trade policies that increase/decrease tariffs resulting in reduced/increased import volume.
- Increased/decreased market share compared to other West Coast ports in the U.S. and Canada, resulting in increased/reduced import and export volume (which could be driven by infrastructure spending/underfunding, regional economic performance, improved/reduced port productivity, etc.); and
- Increased/decreased market share at West Coast ports compared to East Coast ports, resulting in increased/reduced import and export volume (which could be driven by geopolitical events, changes in transportation costs due to fuel prices or emission requirements, improving/slowing economic growth in trade partners, etc.).
- More/fewer first call vessel services.

A complete accounting of the short-term and long-term factors included in the three growth scenarios can be found in the Cargo Forecast beginning on Page 70 ("Scenario Overview"). Figure 5 shows the resulting Moderate Growth container cargo forecast. CAGR is the Compound Annual Growth Rate.

Figure 5: Bay Area Moderate Growth Containerized Cargo Forecast, 2010-2050

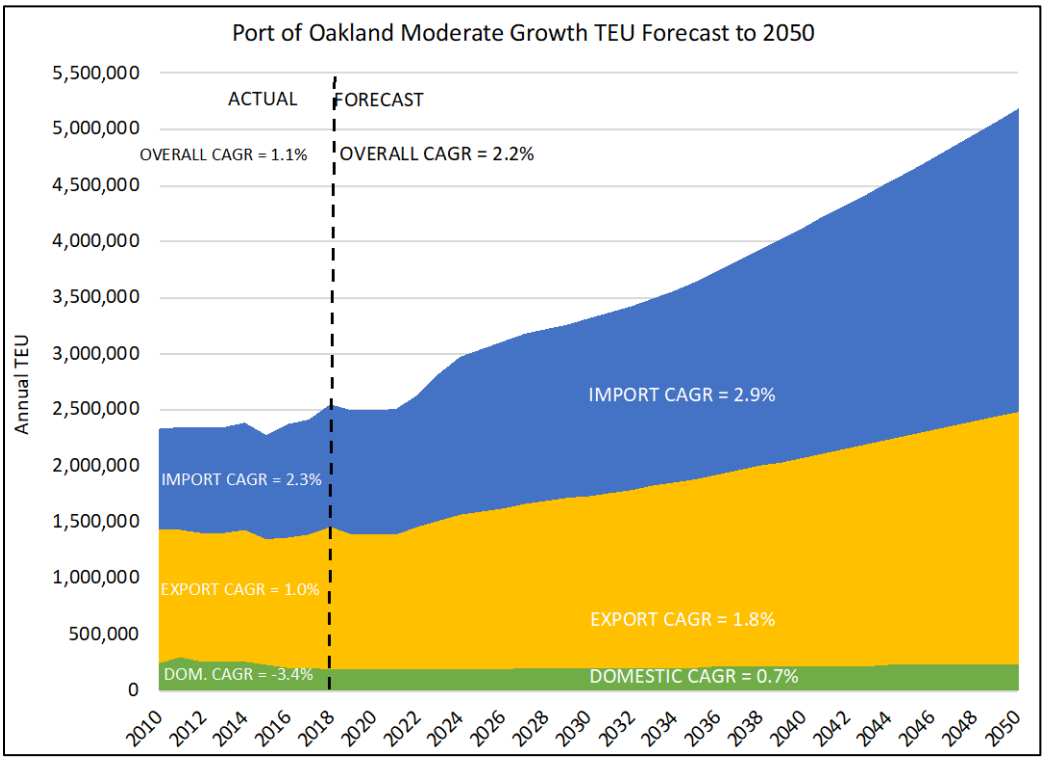
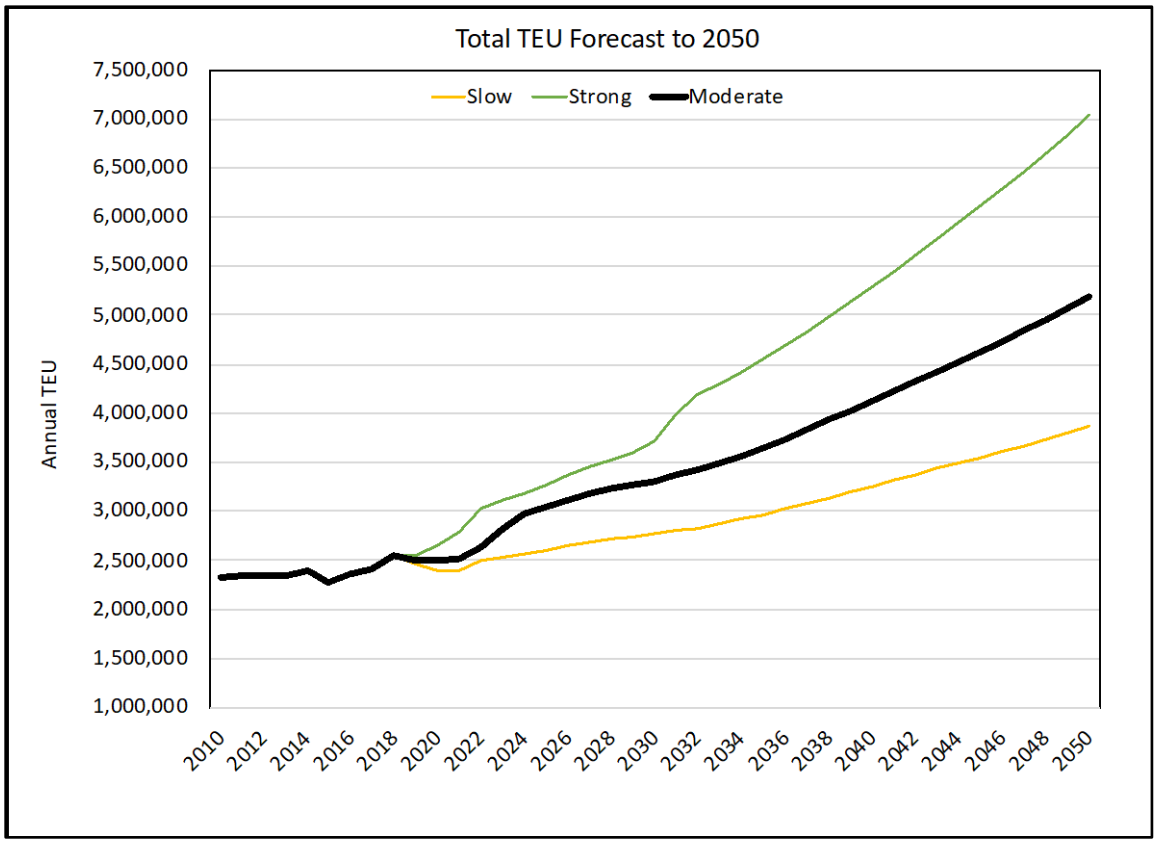


Figure 6 illustrates all three container cargo growth scenarios.

Figure 6: Total TEU Container Cargo Forecast



Under the Moderate Growth scenario, containerized cargo in the Bay Area is anticipated to approximately double in annual volume, from 2.5 million TEU in 2020 to 5.2 million TEU in 2050. Under a Slow Growth scenario, the forecast predicts an increase to approximately 3.86 million TEUs, and under a Strong Growth scenario the forecast predicts an increase to approximately 7.04 million TEUs by year 2050.

c. Containerized cargo capacity

How the Bay Area seaports can accommodate projected cargo growth is a question of capacity. The maximum throughput capacity of a container terminal is a function of its static storage capacity and the average dwell time of containers.

When discussing terminal productivity, it is important to distinguish between *automation* and *densification*, which are two closely related factors frequently subsumed under the general term "automation".

Densification refers to the use of different equipment technology and terminal configurations to increase the number of containers that can be held and handled in a given terminal area. This increases the static storage capacity per acre (the number of container storage slots). This typically entails moving to rail-mounted gantry cranes and re-orienting the container stacks accordingly. The

Long Beach Container Terminal (LBCT) is a prominent example of densification. The equipment is usually electrified, which makes it easier to automate the operation. But automation is not required, and terminals can densify without automation. The Base Productivity case does not assume how the terminals would densify, only that they would do so somehow in response to growing cargo volumes and limited space.

Automation refers to replacing human control with automated control systems. Ports can automate with or without densification, or at various stages of densification. Automation can assist in managing a densified terminal and in increasing cargo velocity (the rate at which cargo flows through the storage area). There is a trend toward the use of auto-strads, which sacrifice some storage capacity in return for greater expected cargo velocity. Automation reduces levels of port employment and is thus frequently opposed by organized labor.

The Cargo Forecast notes that both densification and automation require large-scale capital investment and there are doubts within the industry about the return on aggressive automation investment. If there is less land available for horizontal terminal expansion, there will be additional need for capital investment by the Port, the terminal operators, or both, to densify and automate in some combination to increase throughput capability on the land available. There is no guarantee that operators or the Port would make such an investment – it would depend on the anticipated financial return.

Finally, it is worth noting that densification and automation may also require that some terminal land be shut down during construction, especially for the more ambitious LBCT-like developments. That would in turn require some excess capacity to take the temporary load. That observation implies that any ambitious densification efforts would have to begin while the Port still has excess capacity.

To calculate capacity, demand for future TEUs can be converted to space demands (in acres), which ultimately allows for an evaluation of where and how Bay Area seaports might expand to meet future cargo growth.

To estimate future productivity at the Port of Oakland, the Cargo Forecast utilizes an industry benchmarking methodology. Table 3 shows an overall comparison of average TEU/acre for major U.S. container ports. Oakland's current productivity is already high, right behind New York-New Jersey.

Table 3: 2017 Port Productivity Comparison

Port	*Container Terminal Acres*	*TEU*	*TEU/Acre*
Los Angeles	1,704	9,343,192	5,483
Long Beach	1,399	7,544,507	5,393
New York & New Jersey	1,496	6,710,817	4,486
Oakland (2018)	**593**	**2,537,400**	**4,279**
Charleston	597	2,177,550	3,647
Seattle/Tacoma	1,011	3,665,329	3,625
Mobile	90	318,889	3,543
Savannah	1,200	4,046,212	3,372
Baltimore	294	962,484	3,274
Virginia	896	2,841,016	3,171
Houston	811	2,459,107	3,032
Boston	90	270,881	3,010
12-port Total	**10,181**	**42,877,384**	**4,212**

Port of Oakland container terminals currently average about 4,279 annual TEU per acre. The Cargo Forecast estimates maximum current capacity at 6,061 annual TEU per acre and long-term sustainable capacity at 7,112 annual TEU per acre based on achieving high terminal productivity in line with industry benchmarks. The forecast thus allows for a *66-percent productivity increase* over the present average throughput. Container terminals can be expected to expand horizontally where possible, and then invest in productivity improvements to accommodate further cargo growth. Again, it is important to note that the Cargo Forecast productivity scenarios do not assume *how* the terminal would densify, only that the terminal would do so somehow in response to growing cargo volumes and limited space.

As shown on Table 4, the future demand for Port of Oakland land needed to accommodate containerized cargo throughput under the Moderate Growth scenario is forecast to increase from approximately 563 acres currently in use (as of 2019) to 729 acres by year 2050. Under a Slow Growth scenario, the forecast is a demand for only 543 acres, and under a Strong Growth scenario the forecast is a demand for as much as 990 acres by year 2050.

Table 4: Containerized Cargo Forecast and Demand – Port of Oakland

Growth Scenario	*Total Demand TEUs [1]*	*Increase TEUs [1]*	*Total Demand Acres [2,3]*	*Increase Acres [2,3]*
Existing	2.546 million	-	563 acres [4]	-
Moderate Growth Scenario	5.188 million	2.642 million	729 acres	166
Slow Growth Scenario	3.862 million	1.316 million	543 acres	-20
Strong Growth Scenario	7.039 million	4.493 million	990 acres	427

Sources:

1. Tioga Cargo Forecast, May 2020, Exhibit 86, page 79
2. Tioga Cargo Forecast, May 2020, Exhibit 104, page 103

Notes:

3. Assumes long-term sustainable capacity at 7,112 annual TEU per acre, based on achieving high terminal productivity
4. Represents 593 total acres in current use, less 30 acres used as off-dock storage and not suitable as long-term terminal space

Table 5 shows the Port of Oakland's acreage in terminals and major off-dock parcels. It is important to note the distinction between:

- Sites and acreage currently used as operating marine terminals.
- Other sites and acres that could potentially be incorporated in marine terminals but may be idle or in ancillary uses at present, such as Berths 20-21, Berths 22-25, the Roundhouse parcel, and Howard Terminal.
- Sites suitable for ancillary use but which cannot be incorporated in marine terminals, such as the 30 acres being used for off-dock staging by Shipper's Transport Express (STE).

Table 5 illustrates that of 829 total acres, 593 acres are in use and 236 acres remain available for expansion.

Current statewide emission goals call for zero emissions or near-zero emissions at marine terminals by 2030. With current and foreseeable technologies, achieving these goals requires electrification. Electrification technologies require space for a battery exchange and servicing building, and potentially a local substation. Therefore, the capacity estimates shown in Table 5 reflect a reduction in the working acres of each terminal by approximately 2 acres.

Table 5: Port of Oakland Terminals and Acreages

Site	*Acres*	*2019 Acres in Use*	*Potential Terminal Acres*	*Build-out* Acres	*Post-Electrification Acres*
Ben Nutter	75	75	0	**95**	**93**
Berths 33-34	20	-	20		
OICT 55-56	120	120	0	**290**	**288**
OICT 57-59	170	170	0		
TraPac	123	123	0	**123**	**121**
Matson	75	75	0	**101**	**99**
Roundhouse	26	-	26		
Berths 20-21**	18	-	150	**150**	**148**
Berths 22-24	132	-			
Howard Terminal*	40	-	40	**40**	**38**
Subtotal	**799**	**563**	**236**	**799**	**787**
Off-Dock Staging***	30	30	0	0	0
Total	**829**	**593**	**236**	**799**	**787**

* Assumes 10 acres will be used for Inner Harbor Turning Basin
** 18 acres may become dry bulk terminal for 12 years (in negotiation)
*** Not usable as long-term terminal space

These existing and potential future terminal properties are described below.

- The Ben E. Nutter Terminal is 75 acres in size. The Nutter terminal is located on a peninsula and has limited expansion potential without Bay fill.
- OICT is effectively fully built out at 290 acres, 120 acres at Berths 55-56 and 170 acres at Berths 57-59. OICT is also currently using 30 acres of off-dock land for container staging, operated by Shippers' Transport Express. The full working area of OICT is therefore 320 acres at present.
- The TraPac terminal has recently been rebuilt and expanded to 123 acres. It is adjacent to the vacant Outer Harbor Terminal (OHT, former Ports America) site.
- The Matson terminal presently occupies 75 acres.

Within the existing Port of Oakland, there is the potential to expand terminal space incrementally to relieve congestion and to accommodate trade growth. These potential expansion areas include Howard Terminal as well as three parcels of land that are contiguous with existing marine terminals and potentially usable as parts of those terminals.

- **Howard Terminal.** Howard Terminal is presently used for ancillary support functions and covers 50 acres. There are no significant size expansion options for Howard, and plans for an expanded Inner Harbor Turning Basin could reduce the available land at Howard Terminal to 40 acres.
- **Berths 33-34.** The unused area at Berths 33-34, between the Ben E. Nutter and TraPac terminals, totals 23 acres. This is a possible expansion space for the Nutter terminal. The area at Berth 34 is not usable as a vessel berth due to the presence of BART's Transbay Tube about 20' below water level.
- **Roundhouse Site.** The Roundhouse site of 26 acres could be used to extend Matson's terminal to a total of 101 acres, although it does not provide additional berth length.
- **Berths 20-21 and 22-24**. The Berth 22-24 Outer Harbor Terminal (OHT) site is what remains of the former Ports America terminal after a portion was used to expand TraPac. The remainder site covers 150 acres that could be used as a separate terminal. The Port intends to lease 18 acres of Berth 20-21 to Eagle Rock Aggregates (ERA) to develop a dry bulk terminal. Thus, that land may not be available for near-term container terminal use, leaving 132 usable acres. The ERA project is described more below.

The Port also has about 126 acres of undeveloped off-dock space as part of the former Oakland Army Depot. About 30 acres are currently being used for supplementary staging of containers on chassis. All existing planning documents anticipate this land being used for ancillary support uses, rail infrastructure, or commercial development similar to the CenterPoint and CoolPort projects. The Cargo Forecast therefore excludes this site from the terminal capacity estimates.

Eagle Rock Aggregates (ERA) Project

The Cargo Forecast estimated that the ERA project would be 20 acres in size, based on the best available information at the time. The Port of Oakland has submitted a correction via memorandum (see Appendix 1) that the ERA project will instead be 18 acres. The tables in this staff report have been adjusted to reflect this change. The Port of Oakland also notes in its memorandum that the proposed ERA lease has "off-ramps" that would allow the Port to convert the leasehold area to container cargo operations, if needed. The initial lease is for a 12-year term, followed by a 10-year option and a 5-year option.

Expansion Scenarios

Existing marine terminals typically expand incrementally to relieve congestion and accommodate trade growth. Marine terminal expansion is costly and time consuming. Ports and terminals therefore tend to expand existing facilities as needed rather than adding large increments of capacity that may not be utilized for several years.

Based on a review of Port of Oakland planning documents, former terminal configurations, industry literature, and practices at other ports, the Cargo Forecast suggests two main paths are available for Port of Oakland terminal expansion and capacity increases:

- *Low-Cost Horizontal Expansion on Available Terminal Acres*: Horizontal expansion onto contiguous, available land is the quickest and least costly means of increasing capacity and offers the Port of Oakland the greatest flexibility. Incremental horizontal expansion would involve progressive reactivation of the space at Berths 33-34, the Roundhouse property, the OHT and Howard Terminal, by either incorporating them as expansion of other existing terminals or operating them as separate terminals. This scenario also assumes increased throughput capacity to achieve similar efficiencies currently being realized at the OICT (at 6,061 annual TEU per acre) across the entire Port. Horizontal expansion of all available terminal space (including Howard) coupled with increased conventional throughput efficiencies, would raise sustainable Port capacity to approximately 5.24 million annual TEU.
- *Enhanced Efficiency*: The second path forward would involve similar horizontal expansion onto all available contiguous land, coupled with incremental container storage densification, implementation of automation, or other productivity improvements in response to trade growth. This scenario assumes increased throughput capacity to achieve high terminal productivity in line with industry benchmarks (at 7,112 annual TEU per acre), achieved across the entire Port. Extending high productivity capability to all terminals, including Matson and Howard, would raise sustainable Port capacity to 5.60 million annual TEU.

The two pathways were developed into a six-phase expansion scenario for the Port of Oakland, detailed further in the Cargo Forecast.

Table 6 shows the estimated sustainable capacity in TEU in four scenarios: 1) with Howard Terminal and Berths 20-21, 2) without Howard, 3) without Berths 20-21, and 4) with neither Howard Terminal nor Berths 20-21. Berths 20-21 are included for consideration in this table due to the current proposal to lease 18 acres of Berths 20-21 for the Eagle Rock Aggregates project, described above, reducing the total land available for container handling for the length of the project's lease.

Table 6: Container Cargo Growth vs. Annual Terminal Capacity

Estimated Annual Sustainable TEU Capacity for:	*Phase VI: High* Productivity at all Terminals	*2050 Moderate Growth TEU and Maximum Capacity Utilization*		*2050 Slow Growth TEU and Maximum Capacity Utilization*		*2050 Strong Growth TEU and Maximum Capacity Utilization*	
All Potential Terminal Acres	5,597,348	5,187,588	93%	3,862,435	69%	7,038,560	126%
Potential Terminal Acres w/o Howard	5,312,858	5,187,588	98%	3,862,435	73%	7,038,560	132%
Potential Terminal Acres w/o Berths 20-21	5,455,103	5,187,588	95%	3,862,435	71%	7,038,560	129%
Potential Terminal Acres w/o Howard or Berths 20-21	5,170,613	5,187,588	100%	3,862,435	75%	7,038,560	136%

A more stringent requirement, retaining the capacity to handle the 8.4-percent average August monthly peaking, would lead to somewhat more serious or earlier shortfalls, explained further in the Cargo Forecast beginning on Page 79.

Table 6 shows that the Port of Oakland would be at or near capacity under the Moderate Growth forecast, and at estimated maximum terminal capacity under high productivity assumptions. If Berths 20-21 are not returned to container cargo use, the Port would be at about 95 percent of capacity by 2050 under Moderate Growth assumptions. If Howard Terminal were unavailable for container cargo handling but Berths 20-21 were available, the Port of Oakland would be at about 98 percent of capacity in 2050. If both Howard and Berths 20-21 were unavailable for container cargo use, the port would be at 100 percent capacity by 2050. The Slow Growth forecast would leave the Port of Oakland at 69 to 75 percent of capacity by 2050, while the Strong Growth forecast would exceed the port's estimated maximum capacity by 26 to 36 percent.

To facilitate comparisons between cargo types, Table 7 shows terminal acres available and required under the maximum productivity assumption.

Table 7: Container Cargo Growth and Acreage Requirements

Container Terminal Acres	*2050 Acres Available**	*Moderate Growth Required*	*Moderate Growth Reserve*	*Slow Growth Required*	*Slow Growth Reserve*	*Strong Growth Required*	*Strong Growth Reserve*
All Potential Terminal Acres	787	729	58	543	244	990	(203)
Potential Terminal Acres w/o Howard	747	729	18	543	204	990	(243)
Potential Terminal Acres w/o Berths 20-21	767	729	38	543	224	990	(223)
Potential Terminal Acres w/o Howard or Berths 20-21	727	729	(2)	543	184	990	(263)

As illustrated in this table, under the Moderate Growth scenario, there would be approximately 18 acres of space available in reserve for container handling if Howard Terminal were to be removed from port priority use. If Berths 20-21 were also not available, then there would be zero acres of reserve area available.

The Port of Oakland notes (see Appendix 1) that based on these options under the proposed ERA lease, the Port would have sufficient capacity under the Moderate Growth Forecast and could choose to not approve the options if growth proves to be stronger than forecast.

- In 2034 (at the end of the 12-year initial lease), the Port would be handling approximately 3.57 million TEU, which is within existing Port capacity as shown in Exhibit 95 of the Cargo Forecast.
- In 2044 (at the end of the 10-year option), the Port would be handling approximately 4.53 million TEU, which is within the Phase 1 Configuration Scenario capacity without Howard Terminal or Berths 20-21 (see Exhibit 95 of the Cargo Forecast).
- In 2049 (at the end of the 5-year option), the Port would be handling approximately 5.07 million TEU, which is within the Phase III through Phase VI Configuration Scenario capacities without Howard Terminal or Berths 20-21 (see Exhibit 95 of the Cargo Forecast).

BCDC staff have incorporated the Port's analysis into this report. However, it is not clear where Dry Bulk operations could relocate if the Port chose to terminate the Eagle Rock Aggregates lease at one of these "off-ramps", given the Cargo

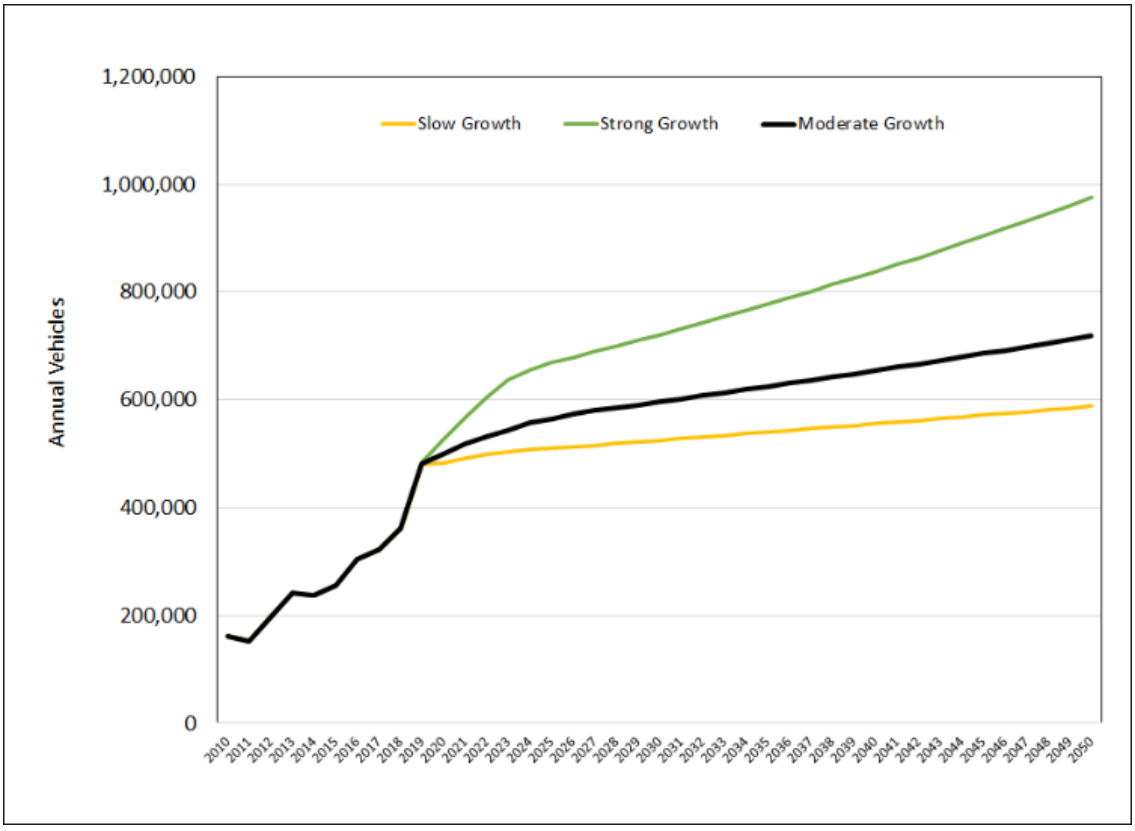
Forecast's expectations that Dry Bulk cargo will also continue to grow, as described further below.

d. Roll-on roll-off (Ro-Ro) cargo growth and capacity

Ro-Ro refers to cars, trucks, and other wheeled cargo that are driven on and off specialized ships on their own wheels or using a platform vehicle. Ro-Ro auto carriers are typically much smaller than container vessels.

The outlook for Ro-Ro cargo through San Francisco Bay depends on the growth in import and export auto volume, and on how many vehicles can be stored, processed, and moved through Bay Area facilities. Other long-term factors, such as a possible widespread transition to autonomous driving vehicles, may influence the volume and share of Ro-Ro cargo handled by Bay Area seaports. The compound annual growth rate between 2018 and 2050 is projected to be 2.2 percent in the Moderate Growth scenario, 1.5 percent in the Slow Growth scenario, and 3.2 percent in the Strong Growth scenario. Figure 7 illustrates all three Ro-Ro cargo growth scenarios.

Figure 7: Ro-Ro Cargo Forecast to 2050



The Ports of Benicia and Richmond primarily import vehicles in Ro-Ro vessels; the Port of San Francisco handles export vehicles. Existing Ro-Ro terminals total about 215 acres, which compares closely to the estimate of 207 acres currently required under the Cargo Forecast base productivity estimates. This comparison is also consistent with the observations by port officials that the Richmond and Benicia terminals are operating at or near capacity at present. Table 8 summarizes the existing facilities handling Ro-Ro cargo. Like the analysis undertaken for containerized cargo, it is possible to estimate space demands by multiplying the number of acres by productivity (measured by annual units per acre). This produces a baseline to understand existing capacity and how much expansion will be needed to meet forecasted needs by 2050.

Table 8: Existing Bay Area Ro-Ro Terminals

Terminal	*Acres*	*Low Capacity** *Units per year*	*Base Case* Capacity** *Units per year*	*High Capacity**** *Units per year*
Benicia	75	108,302	148,212	217,737
Richmond Port Potrero	80	115,522	158,093	232,252
SF Pier 80	60	86,641	118,570	174,189
Total	**215**	**310,465**	**424,875**	**624,178**

*Low Capacity: 1,444 vehicles annually per acre
**Base Case Capacity: 1,976 vehicles annually per acre
***High Capacity: 2,903 vehicles annually per acre

Table 9 displays the combined Ro-Ro forecast and capacity analysis. The Moderate Growth forecast and Base Case Productivity scenario together suggest that a total of 375 acres of Ro-Ro terminal space would be required to handle 718,863 vehicles in 2050—an addition of 160 acres to what presently exists. The Slow Growth scenario would require about 98 additional acres with base case productivity. The Strong Growth forecast would require 281 acres of additional space under the base case productivity.

Table 9: Ro-Ro Cargo Summary

Combined Scenarios	*2018*	*2050*	*CAGR***	*Existing Acres*	*Additional Acres Required*
Slow Growth	**360,671***	**587,949***	**1.5%**		
Low Prod. Acres	207	409	2.1%	215	194
Base Prod. Acres	207	**313**	1.3%	215	98
High Prod. Acre	207	234	0.4%	215	19
Moderate Growth	**360,671***	**718,863***	**2.2%**		
Low Prod. Acres	207	496	2.8%	215	281
Base Prod. Acres	**207**	**375**	**1.9%**	**215**	**160**
High Prod. Acres	207	278	0.9%	215	63
Strong Growth	**360,671***	**974,850***	**3.2%**		
Low Prod. Acres	207	665	3.7%	215	450
Base Prod. Acres	207	**496**	2.8%	215	281
High Prod. Acres	207	363	1.8%	215	148

*Number of vehicles per year
**Compound Annual Growth Rate

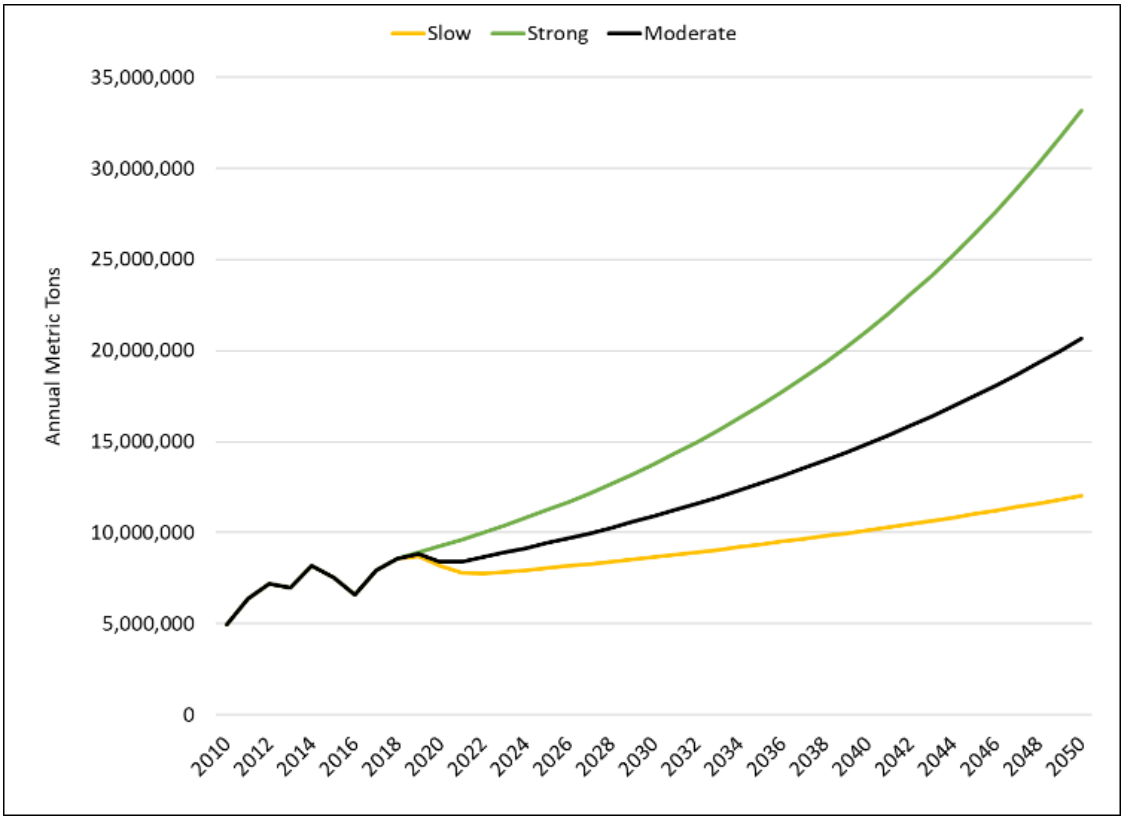
The Summary Findings section below summarizes the available expansion sites for Ro-Ro cargo that fall within BCDC's jurisdiction.

e. Dry Bulk cargo growth and capacity

Dry Bulk cargo refers to commodities carried in bulk, such as grain or gravel. The dry bulk imports handled through Bay Area ports have long been dominated by construction industry needs. Major commodities include aggregates (sand and gravel), bauxite and slag (used as concrete additives), and gypsum (used in wallboard). Outbound dry bulk cargos include scrap metal, petroleum coke (pet coke, a refinery by-product), and coal. All five seaports handle dry bulk or plan to handle dry bulk in some capacity in the near-term future.

The main drivers for dry bulk are growing demand for sand and gravel and a dwindling regional supply, leading to increased imports. Recent studies have concluded that California will not have enough aggregate resources to meet demand over the next 50 years, suggesting that the need to import aggregates will rise sharply over the horizon of the Cargo Forecast.

Figure 8: Bay Area Total Dry Bulk Cargo Forecast, 2010-2050



The Moderate Growth scenario anticipates an average of 113,379 annual metric tons per acre, a bit more than double the current average and in line with new terminal proposals. Moderate Growth would likely require the equivalent of 30 additional acres and 1 additional berth to handle the expected volume across the region, as indicated in Table 10.

Table 10: Bay Area Estimated Dry Bulk Terminal Requirements for 2050

Factor	*Existing*	*Moderate Growth*	*Slow Growth*	*Strong Growth*
Annual Metric Tons	8,575,119	**20,654,319**	12,025,443	33,183,607
Tonnage increase	n/a	**139%**	44%	274%
MT/Acre	56,452	**113,379**	79,167	146,295
Increase over 2018	n/a	**101%**	40%	159%
Acres	152	**182**	152	227
Additional Acres	n/a	**30**	-	75
Terminals	12	**13**	12	15
Berths	12	**13**	12	15
Additional Berths	n/a	**1**	**(0)**	**3**

3. Summary findings

Table 11 provides estimates of total seaport terminal acreage requirements under the three forecast scenarios for all three types of cargo. There are many possible variations. The three cargo types will not necessarily follow similar growth scenarios, although all will be affected by the same underlying regional economic growth trends. Also, different terminals may follow different productivity strategies. The general implication of Table 11, however, is clear:

- Under moderate cargo growth assumptions, the Bay Area will need to utilize more of its terminal space, estimated at about 327 additional acres by 2050.
- Under slow cargo growth assumptions, the Bay Area will need about 98 acres more active terminal space by 2050.
- Under strong growth assumptions across the three cargo types, the Bay Area will need substantially more seaport terminal space, about 753 more acres than is now active (and will need to activate additional berth space for larger container vessels).

Table 11: Estimated Seaport Acreage Requirements

Cargo Type	*Moderate Growth*	*Slow Growth*	*Strong Growth*
Container Cargo Terminal Acres			
Existing	593	593	593
2050 projected	729	543	990
Additional acres needed	**136**	0	397
Ro-Ro Cargo Terminal Acres			
Existing	215	215	215
2050 projected	375	313	496
Additional acres needed	**160**	98	281
Dry Bulk Cargo Terminal Acres			
Existing	152	152	152
2050 projected	182	152	227
Additional acres needed	**30**	0	75
Combined Cargo Terminal Acres			
Existing	960	960	960
2050 projected	1286	1,008	1712
Additional acres needed	**327**	**98**	**753**

Within the Bay Area seaports there are a few dormant or under-utilized terminal sites.

- San Francisco's Pier 96, formerly part of the Pier 94-96 container terminal, is currently partially vacant and partially in non-cargo uses. There is also usable land between Pier 92 and Pier 94.
- Oakland's Berth 20-21 area is used for ancillary services at present, although there is an active proposal to develop an 18-acre dry bulk terminal there (Eagle Rock Aggregates).
- Oakland's Berth 22-24 area, formerly part of the Ports America complex, is currently used for ancillary port functions.
- Oakland's Berth 33-34 area, between the Ben E. Nutter and TraPac terminals, is currently used for ancillary port functions.
- Oakland's Howard Terminal is also currently used for ancillary services.
- Oakland's Roundhouse parcel, although not on the water, is adjacent to active container terminals and is currently used for ancillary services.
- Richmond's Terminal 3, formerly a small container terminal, was recently used to load logs into containers for export through Oakland but is not handling any cargo over the wharf.

Table 12 shows the Port Priority Use Areas available for terminal expansion and the types of cargo each site can feasibly handle. Each site can only accommodate one type of cargo at a time. The total Available Acres for each cargo type ranges depending on how sites end up being utilized. The table thus illustrates the potential expansion pathways and tradeoffs as the remaining Bay Area dormant or underutilized sites are developed in the future.

Table 12: Port Priority Use Areas available for terminal expansion

Site	*Acres*	*Potential use: Container*	*Potential use: Ro-Ro*	*Potential use: Dry Bulk*
SF Pier 96 & Other	67		X	X
Oakland Berths 20-21	18	X	-	X
Oakland Berths 22-24	132	X	-	-
Oakland Berths 33-34	20	X	-	-
Oakland Roundhouse	26	X	-	-
Oakland Howard[1]	38	X	X	X
Richmond Terminal 3	20		X	X
Redwood City Omni-Terminal	2		-	X
Available Acres[2]	**323**	**176-234**	**0-129**	**0-149**

[1] Post turning basin expansion project: 38 acres for container cargo, or 40 acres for Ro-Ro or dry bulk cargo.

[2] Ranges in this row represent the minimum and maximum acreage that could be given to each cargo type out of 323 total acres.

a. Implications for Howard Terminal

The role that Howard Terminal could play in overall Bay Area seaport capacity and commerce depends on growth and productivity improvements in the container, Ro-Ro (automobile), and dry bulk trades.

- *Container Cargo*. For container cargo, the Moderate Growth scenario may not require Howard's acreage, depending on terminal productivity improvements. A Slow Growth scenario could likely be accommodated without Howard Terminal. A Strong Growth scenario would require Howard Terminal's acreage. Use of Berths 20–21 for dry bulk cargo would increase the need for Howard Terminal's space. A truncated berth after turning basin expansion, however, may limit Howard Terminal's utility as a stand-alone container terminal without an extension to the east.
- *Ro-Ro Cargo*. Howard Terminal could handle Ro-Ro cargo and fill some of the need for additional Bay Area capacity under a Moderate Growth scenario, especially for exports (e.g. Tesla or another maker). The configuration of a Ro-Ro terminal at Howard would depend on the mix of import and export vehicles and the need for rail connections and processing facilities.
- *Dry Bulk Cargo*. Howard Terminal could serve as a dry bulk terminal but would likely increase dust and heavy truck impacts on surrounding streets. The use of Berths 20-21 and the development of the Oakland Bulk and Oversize Terminal (OBOT) for dry bulk would reduce the need for dry bulk cargo at Howard, but OBOT is not designated as Port Priority and is on City-owned rather than Port land.

As the analysis of overall seaport acreage requirements in the Cargo Forecast shows, Bay Area seaports are expected to be at or near capacity by 2050 under Moderate Growth assumptions, and to require space beyond existing active container, Ro-Ro, and dry bulk terminals. Under the Moderate Growth scenario, the Bay Area would need to activate 327 additional acres. There are approximately 323 acres identified in the Cargo Forecast that could be used to meet cargo growth needs, including Howard Terminal, leaving an estimated 4-acre deficit. A deficit in space available to accommodate growing regional cargo needs could increase pressure for Bay fill, even with the removal of the Port Priority Use area at Howard Terminal.

According to this analysis, Howard Terminal may be needed to meet the Cargo Forecast Moderate Growth needs.

Of course, Howard Terminal cannot serve all three of these cargo types. If Howard Terminal is used for container cargo, other sites must accommodate the need for Ro-Ro and dry bulk capacity. If Howard Terminal's long-term ability to handle containers is compromised by a truncated berth, the Cargo Forecast notes that Ro-Ro or dry bulk cargo may be a more suitable use.

Overall, the Cargo Forecast concludes that utilizing most or all of Howard Terminal (and Pier 96) would probably be required for sufficient capacity under the Moderate Growth scenario. The Bay Area should have sufficient capacity in the Slow Growth Scenario through 2050. Available space would be insufficient under the Strong Growth scenario even if all available terminals were utilized.

B. Viability and need for Howard Terminal as a marine terminal

As described in Section V(A) of this report, Howard Terminal assumed its present-day configuration in 2000. Between 2005 and 2013, Howard Terminal was used by Matson to support its domestic container service. In 2014, Matson terminated its lease and moved to the former APL terminal at Berths 60-63. The following sections include a preliminary analysis of the viability of Howard Terminal for continued use as a marine terminal. BCDC staff note that this analysis is based on limited information about the viability of the site, which is summarized in the Cargo Forecast (See the Cargo Forecast "Appendix: Potential Role of Oakland's Howard Terminal"). BCDC staff have requested information from the Port of Oakland related to Howard Terminal's feasibility to handle container cargo, Ro-Ro cargo, or dry bulk cargo numerous times, but to date have only received a response related to meeting the Moderate Growth forecast for container cargo (see Appendix 1). This has limited BCDC staff's ability to assess the need for Howard Terminal for continued use as a marine terminal. BCDC staff also note that this analysis is a high-level feasibility discussion. Any proposal would need to be fully scoped and developed, reviewed with relevant stakeholders and community, and undergo all relevant city, state, and federal approvals. This analysis has not done that.

1. Container cargo use

The Cargo Forecast notes that Howard Terminal is the smallest of the Oakland terminals, but is also the largest idle port terminal on San Francisco Bay and the best available site for an additional active container terminal. At 50 acres and with 42 feet of depth at its berth, Howard Terminal is small by current West Coast container terminal standards. Table 14 compares Howard Terminal with other U.S. container terminals in the 40-acre to 75-acre range. Significantly, SSA/Pier C at Long Beach and Terminal 25/30 at Seattle are Matson terminals, as was Howard until 2014. Midport at Port Everglades also handles domestic cargo.

Table 13: Container Terminals of 40-75 Acres

Terminal	*Port*	*2017 Acres*	*2017 Berth Length*
Midport	Port Everglades	40	800
Hooker's Point	Tampa	40	3,000
Howard Terminal	Oakland	50	2,016
East Sitcum Terminal	Tacoma	54	1,100
Napoleon Avenue Container Terminal	New Orleans	61	2,000
SSA / Pier C	Long Beach	70	1,800
Terminal 25/30	Seattle	70	2,700
Ben E. Nutter Terminal	Oakland	74	2,157

Howard Terminal could presently accommodate most of the container vessels that called Oakland in 2017. Howard Terminal has a reported draft of 42 feet. With 4 feet of underkeel clearance, Howard Terminal can accept vessels with a sailing draft of up to 38 feet. Vessels are rarely loaded to their full design draft. Ordinarily, the mix of empty and loaded containers and full and vacant slots limits vessels to a maximum of about 90 percent of their design draft. A vessel with a 42.2-foot design draft would therefore usually operate at a sailing draft of 38 feet or less. Of the 1,457 container vessel calls at Oakland in 2017, 1,167 (80 percent) had design drafts of 42.2 feet or less, aggregating 6.7 million TEU, 72 percent of the total capacity.

Howard Terminal currently has a 2,016-foot berth (including the 70-foot dolphin), adequate for vessels with design drafts of up to 43.3 feet, which are typically 1,200 feet long and require a 1,350-foot berth. A 2,016-foot berth could also accept two smaller vessels of up to around 2,000 TEU each, typical of those used in domestic trades (e.g. Pasha or Matson vessels).

The existing basin adjacent to Howard Terminal is 1,500 feet in diameter, sufficient to turn a vessel of up to 1,210 feet in length. This length corresponds closely to the largest vessel size that could currently be handled with Howard's berth length and draft.

Howard Terminal served Matson vessels as recently as 2014. The current cranes are capable of handling vessels of up to around 4,500 TEU ("Panamax"). Oakland had 360 calls from vessels of 4,500 TEU or smaller in 2017.

Under current plans, expansion of the turning basin to accommodate larger vessels of up to 1,300 feet would require truncating Howard Terminal's berth. Available preliminary studies suggest that turning basin expansion would take about 965 feet from Howard Terminal's berth length, plus the existing dolphin, leaving the terminal with a 981-foot berth. With a truncated berth of 981 feet, Howard Terminal could accept few of the vessels projected to call at Oakland by 2050 without modifications (e.g. extending the berth or adding a dolphin on the east end).

While Howard Terminal could accommodate smaller vessels essentially "as is," long-term use for container cargo would require upgrades. The Howard Terminal berth would have to be dredged to 50 feet (nominal) to accommodate larger vessels. In a 2013 study for the Port of Oakland, Moffat & Nichol estimated the cost of dredging at $3.8 million. Howard would likely need at least four new super-Post-Panamax cranes, at a cost of around $15 million each, for a total of $60 million. The Moffat & Nichol study also identified a need for wharf strengthening, paving, and other improvements totaling around $13 million to upgrade Howard.

Fifty acres is below the current standard for new container terminals but may be a necessary increment to seaport capacity under the Moderate or Strong cargo growth scenarios.

If Howard Terminal's truncated berth were too small for any of the vessels calling Oakland in 2050, the site would not be fully functional as a standalone container terminal. The Port would then have a choice of using Howard Terminal for off-dock parking or examining the possibility of an extension of the berth to the east.

Productivity Growth. Under the high productivity growth scenario, Howard Terminal's long-term capacity at 38 acres after turning basin expansion is estimated at 270,256 annual TEU. More aggressive productivity increases would reduce the need for Howard's acreage. As noted in the container cargo analysis section, the lowest cost strategy to increase capacity is to expand horizontally, using more land. With less land to work with, the Oakland terminals would need to invest in other means of increasing capacity sooner.

Cargo Growth. Under a Moderate Growth scenario with sufficient productivity increases, the Bay Area could have sufficient container cargo capacity through 2050 without Howard Terminal but would be at or near capacity (estimated at 97.6 percent) with little or no room for future growth. Under a Strong Growth scenario, Oakland is expected to need Howard Terminal's acreage by around 2042.

Use of Berths 20–21. If, as currently proposed, the Port of Oakland develops a dry bulk cargo terminal at Berths 20-21, the available Outer Harbor container terminal space would be reduced by 18 acres if that use continues. At the High Productivity average of 7,112 annual TEU per acre, that development would reduce the Port's long-term container capacity by about 142,240 annual TEU. That development would either:

- Accelerate the need for Howard's capacity, or
- Result in a capacity shortfall by 2050 under the Moderate Growth scenario if Howard Terminal is not available, assuming bulk operations were to continue indefinitely.

Alternatively, the Port of Oakland could give priority to container use and end the dry bulk tenant lease when the capacity was needed for containers as an alternative to using Howard Terminal. The current proposal envisions an initial 12-year commitment to dry bulk cargo. See Appendix 1.

Berth Requirements. To accommodate cargo growth Oakland terminals will need to accommodate larger vessels, more vessel calls, or a mix of larger and more frequent calls. As the berth analysis showed, additional berth space would be required for one or more weekly calls under Strong Growth scenarios if cargo growth is accommodated by increasing vessel size. The role of Howard will change if the turning basin is expanded as currently envisioned.

- **Existing Howard Berth Length.** If cargo growth is accommodated by increasing sailings and holding vessels to a maximum of 25,000 to 26,000 TEU, either Berths 20-21 or Howard Terminal's existing berths, but not both, would be required under Strong Growth scenarios. If Berths 20-21 are used for dry bulk operations, Howard Terminal's existing berths would be needed under any Strong Growth scenario. Under Moderate Growth scenarios, some berth congestion would be expected at TraPac, Ben E. Nutter, and OICT unless either Berths 20-21 or Howard Terminal were available as an alternative.
- **Reduced Howard Berth Length.** With the berth length reduced to 981 feet after the proposed turning basin expansion, Howard Terminal would be unable to handle the vessels expected by 2050 without modifications. This scenario would necessitate the use of Berths 20-21 for containers.
- **Extended Berth Length.** The Cargo Forecast includes a conceptual possible extension of the Howard Terminal berth to the east via a dolphin, fill, or a combination. This extension would entail relocating the ferry pier, which is not considered a barrier over the 30-year forecast horizon. This option would create a new Howard Terminal berth of up to 1,481 feet and enable the terminal to accommodate the larger vessels expected out to 2050. BCDC staff have not evaluated this concept for consistency with its laws and policies.

2. Ro-Ro cargo use

A second potential use for Howard Terminal is Ro-Ro cargo. As described in the "Cargo Forecast" section of this report, there would be a need for up to 160 additional acres of Ro-Ro terminal capacity in the Moderate Growth/base productivity case, and correspondingly higher requirements for faster growth. Howard Terminal's 50 acres would have capacity for about 99,000 annual vehicles in the Base Productivity case. At 40 acres, Howard Terminal could handle about 79,000 annual vehicles.

Typical Ro-Ro vessels are around 650 feet long, with a 40-foot design draft. These vessels would typically sail at a draft of about 36 feet. With 4 feet of underkeel clearance, these vessels would require 40 feet of draft, which is within Howard Terminal's current specifications. These vessels would also fit in a truncated 981-foot berth after turning basin expansion.

Although Howard Terminal does not have active rail service at present, the rail access right-of-way and trackage at the terminal's northwest corner are intact. Figure 9 superimposes an image of the rail loading facility at Richmond's Port Potrero terminal on an aerial photo of Howard Terminal, at approximately the same scale. This informal comparison suggests that it may be possible to add rail loading capabilities to Howard Terminal if access trackage can be rebuilt as required past Schnitzer Steel.

Figure 9: Ro-Ro Rail Facilities Superimposed on Howard Terminal

There has been at least one inquiry to the Port of Oakland regarding Ro-Ro operations at Howard Terminal. That inquiry was ended due to the presence, at the time, of airborne fibrous material from the adjacent Schnitzer Steel operation. According to Port staff, that problem has since been remedied by enclosing the relevant portion of the Schnitzer machinery.

A 2013 Moffat & Nichol study for the Port of Oakland estimated the cost of updating Howard Terminal for Ro-Ro auto and vehicle processing at $16.6 million, including rail track work (at the adjacent Roundhouse site, in the Moffat & Nichol study) and structures for vehicle processing.

The need for rail connections and processing facilities is tied to import vehicle flows. A terminal that distributes nationally (as do Benicia and Richmond) will need rail capabilities on or adjacent to the terminal, and processing facilities to

support accessory installation as well as washing and minor preparation. Export flows will not require such elaborate facilities. It is noteworthy that Howard Terminal is the closest marine terminal to the Tesla plant in Fremont.

3. Dry Bulk cargo use

The Cargo Forecast also implies a need for additional Bay Area capacity for dry bulk cargo, specifically, imported sand and gravel to replace a dwindling regional supply in the greater Bay Area. The dry bulk cargo analysis identified Howard Terminal as a potential site for dry bulk cargo, as along with Oakland Berths 20–21, and San Francisco's Pier 96.

The dry bulk forecast and capacity analysis anticipates a need for three new dry bulk terminals with a total of 30 acres by 2050 under the Moderate Growth scenario. The Slow Growth scenario would not require any additional acreage, while the Strong Growth scenario would require an additional 75 acres, about half of which could be supplied by the 40 post-turning basin expansion acres at Howard Terminal.

As the dry bulk cargo section of the Cargo Forecast discusses in detail, the throughput capacity of a dry bulk terminal is a function of both on-site storage capacity and product turnover. Storage capacity may, however, limit the volume that can be transferred to or from a single vessel call. The proposed 2.5-million-ton annual throughput for the conceptual 18-acre Berth 20-21 facility implies an average of about 125,000 annual tons per acre, or 5.0 million tons for the 40 long-term acres at Howard Terminal, similar to the Moderate Growth average. Use of Howard Terminal for bulk cargo would thus likely satisfy the Bay Area requirements under the Moderate Growth scenario, and part of the requirements under the Strong Growth scenario.

The 2013 Moffat & Nichol report estimated a cost of $61.1 million to develop a dry bulk terminal at Howard but noted that truck transportation could cause impacts to local roads that are not included, and that the final investment would depend on the exact tenant and operation. That estimate included enclosed storage and handling equipment, but not rail access. Rail access may or may not be necessary, although the existing trackage could likely form the basis of upgraded rail facilities if needed.

BCDC staff have inquired with the Port about the feasibility of Howard Terminal to handle all three types of cargo, but have received limited response to date, and this analysis is thus limited. See Appendix 1.

C. Viability and need for Howard Terminal for ancillary uses

From 2014 to present, Howard Terminal has been used for a mix of ancillary uses, which are valid Port Priority Uses under the existing Seaport Plan. According to the Cargo Forecast, these uses have included: Longshore worker training, truck parking and staging, container and chassis storage, cargo transloading, layberthing, and tug boat docking.

The City of Oakland's Final Environmental Impact Report (FEIR) also contains a description of existing uses at Howard Terminal (see consolidated response "4.5 Truck Relocation"). The FEIR states that Howard Terminal is currently leased by the Port to short-term tenants for maritime support uses, including a variety of activities such as heavy truck parking and layover, and equipment and container storage and staging.

According to the FEIR, as of October 15, 2021, existing uses and their approximate acreages include:

- Truck parking/container depot – 16 acres
- Longshoreperson training facilities – 7 acres
- Drayage truck yards (including loaded and empty container storage and staging) – 17 acres
- Vessel berthing for maintenance and storage (wharf area requirements) – 2 acres
- Roadways, unused areas, truck repair, and offices – 8 acres

The FEIR also notes that existing tenants at Howard Terminal currently employ approximately 40 on-site employees and 58 contractors and drivers who may work on or off the site. In addition, an unknown number of independent owner/operator truck drivers rent parking spaces from an on-site parking operator, ABM Parking Services, which occupies the 16 acres of truck parking/container depot use.

As noted in the Cargo Forecast, these interim uses are valuable to the shipping industry as a whole and to the Port's tenants in particular, and create revenue for the Port. The possible exception is layberthing, for which the need is difficult to predict despite periodic inquiries received by the Port.

Some Port scenarios for terminal development and increased productivity entail temporary operations at Howard Terminal while other terminals are being upgraded or renovated, or the relocation of smaller vessel services not ideally accommodated at the largest terminals. Here too, the need is difficult to predict.

In January 2022, the Port of Oakland announced a joint effort with state and federal partners to open and operate a 25-acre off-terminal and paved container yard at Howard Terminal, equipped to move containers off chassis and store them for rapid pick-up as part of an effort to improve the flow of agricultural exports. The yard will provide access to equipment and provide faster truck turns without having to wait for in-terminal space. Agriculture exporters will be assisted by federal and state agricultural

agencies to use the yard, which is expected to operate beginning in March 2022. The Port also identified a need for long-term solutions to support American agricultural exporters, including 1) Asset management, including availability of containers and the chassis used to transport them over the road; 2) Port and inland port operations, including off-dock container yards; and 3) Long-term supply chain strategies and increased investment in critical port infrastructure. In advance of the announcement, the Port terminated leases with more than a dozen small trucking firms operating from Howard Terminal that were leasing space on month-to-month rental agreements.

As part of BCDC's communications to the Applicant for BPA 2-19, BCDC staff have requested the Port to provide information on where ancillary port services and uses would be relocated if Howard Terminal is removed from Port Priority Use, including whether there is additional room for such uses at the Port, or whether the uses would be relocated elsewhere. BCDC staff also asked the Port to clarify whether removing these uses would detract from the regional capability to meet the projected growth in cargo, as per General Policy #4 of the Seaport Plan. To date, the Port has not supplied BCDC with a response. See Appendix 1.

D. Public access

The Commission's Bay Plan Public Access Policy 2, states, in part,

> [M]aximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided. If in lieu public access is required and cannot be provided near the project site, the required access should be located preferably near identified vulnerable or disadvantaged communities lacking well-maintained and convenient public access in order to foster more equitable public access around the Bay Area.

Furthermore, as stated in Seaport Plan Port Priority Use Area Policy #2, "Within port priority use areas, non-port uses such as public access and commercial recreation development may be allowed provided that the use would not impair existing or future use of the area for port purposes."

Existing public access west of Jack London Square is limited because of use conflicts with the Port's strict safety and security restrictions. The primary public shoreline access amenities in this area are Middle Harbor Shoreline Park and segments of the Bay Trail connecting it to West Oakland and beyond. Middle Harbor Shoreline Park is a 38-acre park provided by the Port of Oakland as part of its Vision 2000 program. It is surrounded by, but not included in, the Oakland Port Priority Use Area. The park includes an amphitheater, observation tower, interpretive signage about the site's history and

environmental resources and the Port, and a Water Trail access point. To access the park, one must cross through the Port. Bay Trail segments linking to the park follow along truck routes through the Port, although long sections of the trail in this area are on separated paths, including sections along Maritime Street and portions of 7th Street.

There is currently no public access at the Howard Terminal site. Public access is generally incompatible with active marine terminals and other directly related port uses. BCDC staff anticipate that it is unlikely public access would be provided at Howard Terminal while the site is designated for Port Priority Use. Any future port development at the site that would require maximum feasible public access would likely provide in lieu access, pursuant to the terms of Public Access Policy 2.

E. Sea level rise

Commission Bay Plan Climate Change Policy 2 states,

> When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices.

According to mapping based on the Ocean Protection Council 2018 Sea Level Rise Guidance, under a high emissions Medium-High Risk Aversion scenario, the existing Howard Terminal site would be resilient to approximately 24-inches of flooding at mid-century; however, it could experience some short-term flooding during a 100-year storm event.

The Port of Oakland prepared an AB 691-required port-wide sea level rise impact assessment in 2019. The assessment highlights key vulnerabilities in port assets, noting sea levels where flooding may be experienced and the potential consequences of that exposure. The assessment found that the Howard Terminal shoreline would be overtopped by extreme storm flooding, exposing most of the terminal area, including utilities and access roads.

While Howard Terminal is expected to eventually experience flooding in its current state, future development (whether for port or non-port uses) on the site could alter its vulnerability and the vulnerability of surrounding sites.

F. Environmental justice and social equity

Bay Plan Policy 1 on Environmental Justice and Equity states, "The Commission's guiding principles on environmental justice and social equity should shape all of its actions and activities." Bay Plan Environmental Justice and Equity Finding j states, in part, "the Commission has committed to the following guiding principles to integrate environmental justice and social equity into its mission. The Commission will:

- Maintain its commitment to ensuring that the Bay remains a public resource, free and safe for all to access and use regardless of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability.
- Continually strive to build trust and partnerships with underrepresented communities and community-based organizations.
- Endeavor to eliminate disproportionate adverse economic, environmental, and social project impacts caused by Commission actions and activities, particularly in disadvantaged and vulnerable communities.
- Ensure that the needs of vulnerable shoreline communities are addressed as the Commission assists all stakeholders plan for current and future climate hazards.
- Work collaboratively and coordinate with all stakeholders to address issues of environmental justice and social equity.
- Continually build accountability, transparency, and accessibility into its programs and processes."

1. Applicant outreach

Consistent with these guiding principles, this section summarizes the public outreach undertaken by the Applicant, as well as the City of Oakland and the Port of Oakland.

The City of Oakland, Port of Oakland, and the Athletics initiated a Community Benefits Agreement (CBA) process in December 2019 and a steering committee comprised of Oakland community members and stakeholders led the 18-month public engagement effort. The process assembled seven working groups to form a coalition of Topic Cohorts for the following categories: Community Health & Safety, Culture Keeping & History, Economic Development & Jobs, Education, Environment, Housing, and Transportation. The Topic Cohorts were tasked to draft a prioritized list of community benefits and mitigation recommendations for the Project. These recommendations were then analyzed and refined by a third-party consultant and a draft CBA was released to the public in June 2021. The CBA effort is ongoing and will be finalized in tandem with the development agreement for the Project.

Additionally, Port staff has conducted at least 10 meetings with seaport stakeholders to receive input regarding appropriate and reasonable Seaport Compatibility Measures (SCM) between 2019 and 2021. Following a "Seaport Compatibility Measures Conference" attended by over 60 stakeholders in November 2019, Port and City staff compiled the suggested measures and analyzed their potential for inclusion in the Draft EIR. In early 2020, prior to the release of the Draft EIR, City staff held a workshop for seaport stakeholders to present and obtain feedback on transportation-related measures intended to support truck access to the seaport. After the Draft EIR was published and the comment period closed, the Port resumed meeting with representatives of the seaport stakeholders to review the SCMs included in the Draft EIR and potential additional SCMs. Each of these post-Draft EIR meetings focused on a specific topic related to Port operations (for example, trucking, rail, and maritime navigation) with between approximately five and 50 stakeholders in attendance at each meeting.

2. BCDC staff analysis

Social vulnerability mapping shows numerous block groups categorized as highest or high social vulnerability within a mile of the Oakland Port Priority Use Area. These block groups are clustered in the West Oakland, Old Oakland, and Chinatown neighborhoods. In West Oakland, the closest neighborhood to the Oakland Port Priority Use Area, indicators that factor into social vulnerability include high percentages of households qualifying as very low income,[2] and scoring among the most impacted Census tracts in California for the presence of hazardous cleanup activities (ranging from the 85th to 100th percentiles), groundwater threats (95th to 99th percentiles), and impaired water bodies (86th to 90th percentiles), with some tracts also scoring among the most impacted by the presence of hazardous waste and solid waste facilities.

In the high and highest vulnerability Old Oakland block groups, about half of all households qualify as very low income; in Chinatown, the high and highest vulnerability block groups are majority very low income, and on average about half of the households in the block groups are limited English speaking, with most speaking Chinese as a primary language. In both neighborhoods, the block groups with high and highest social vulnerability are also in Census tracts that rank above the 70th percentile for hazardous cleanup activity, groundwater threat, hazardous waste, and impaired water bodies burdens.

[2] 30 to 50 percent of area median income.

All high and highest social vulnerability block groups were identified as either at risk of or experiencing ongoing gentrification or displacement by the Urban Displacement Project. The majority of residents of high vulnerability block groups in the three neighborhoods are people of color. The socio-economic and demographic composition of West Oakland is consistent with the legacy of redlining, the discriminatory real estate lending practice that effectively concentrated Black residents into the least desirable neighborhoods in the city.

These statistics offer some insight as to which locations near the Oakland Port Priority Use Area may experience disproportionately high shares of the social and environmental impacts of industrial or past industrial activities in the area, but for West Oakland, the Social Vulnerability Index is supplemental to the large body of research and reporting on environmental conditions and health disparities that has been produced by the community itself, as well as by agencies like the City of Oakland and the BAAQMD. This documentation provides a more thorough discussion of the neighborhood's experience with environmental impacts and how they relate to the Port's activities and its proximity to the neighborhood.

West Oakland's primary environmental health concern is air pollution: ships, equipment, and trucks at the port emit diesel particulate matter, $PM_{2.5}$, and toxic air contaminants (TACs). These types of emissions have been connected to higher rates of asthma, cancer, heart disease, and stroke, in various studies, and all of these ailments have been documented in West Oakland at higher rates than Alameda County as a whole.[3]

There are a number of existing efforts to address air quality concerns in West Oakland. The West Oakland community, led by a partnership between the West Oakland Environmental Indicators Project and BAAQMD, developed an AB 617 community emissions reduction program, known as the West Oakland Community Action Plan (WOCAP). The plan was completed in 2019 by a steering committee composed of residents, community leaders, and agency representatives, and adopted by the BAAQMD Board of Directors. As the Port of Oakland and its operations were identified as a major source of harmful air pollutants, the plan includes a number of strategies to reduce emissions, including siting port ancillary uses away from residences, electrification and zero-emissions vehicles, upgrading equipment, and other

[3] Bay Area Air Quality Management District and West Oakland Environmental Indicators Project, 2019. Owning Our Air: The West Oakland Community Action Plan. Volume 1: The Plan.

approaches to improve the efficiency of truck traffic to and from the port. The Port of Oakland and other maritime stakeholders, including the trucking industry, have been active in the plan's development and implementation.

Additionally, in 2019, the Port of Oakland completed its Seaport Air Quality 2020 and Beyond Plan to improve air quality at the port, which includes several strategies to establish electrification infrastructure to meet the emissions reduction requirements of the California Air Resources Board's (CARB's) At-Berth Regulation. The Port of Oakland is also working with operators, truckers, and community members to study and improve truck routing, and is participating in goods movement and truck route planning led by other agencies, including efforts by Caltrans, the Alameda County Transportation Commission, the Bay Area Regional Coalition, and MTC/ABAG.

As mentioned under the Public Access section, another environmental justice issue in West Oakland is the lack of access to the shoreline. Due to the size of the port, the intensive nature of its operation, and the degree of security the Port of Oakland is obligated to provide, nearly the entire West Oakland shoreline is closed to the public, with the exception of Middle Harbor Shoreline Park.

Because BPA 2-19 is limited to a consideration of whether Howard Terminal is needed for port use, and not an assessment of the proposed Oakland Sports and Mixed-Use Project, this staff report does not include an analysis of the potential impacts of that Project.

Retaining the Port Priority Use Area designation for Howard Terminal would enable the continued use of Howard Terminal for a variety of port purposes. Howard Terminal could be redeveloped into an active marine terminal for cargo handling or could continue to be used for ancillary services. Redeveloping Howard Terminal for cargo handling would likely require a BCDC Permit and the environmental justice impacts under the Bay Plan Policies on Environmental Justice and Equity would be evaluated as part of that process.

Removing the Port Priority Use Area designation would prevent Howard Terminal from being redeveloped for cargo handling and result in the relocation of existing ancillary uses, which is described further in "Section VIII: Ancillary Uses". The impact of relocating ancillary uses like truck parking, container staging, and layberthing, on adjacent socially vulnerable groups depends on where these uses are relocated. Section 4.5 of the Consolidated Response of the City of Oakland's FEIR focuses on the issue of truck relocation. As noted, the City received several comments after the Draft EIR was released from individuals concerned that displacing existing uses from Howard Terminal could lead to an increase in truck parking and idling in West Oakland, where efforts to reduce truck activities have been ongoing for many

years, and where residents are already exposed to greater levels of air pollutant emissions than in other neighborhoods. In response, the FEIR notes that the tenants engaged in truck-related activities at Howard Terminal are on short term leases that can be terminated with 30 days' written notice. The FEIR offers three options that these tenants might have, including:

- Relocate to the 15 acres of parking that the Port has committed to provide (currently the Roundhouse parking facility) to the extent space is available, or to the City's parking in the former Oakland Army Base (OAB), especially for overnight and short-term parking.
- Relocate to a site outside of the Port. The zoning regulations of many jurisdictions within and adjacent to the Bay Area region have a variety of industrial zoning districts that permit and contain supply-chain related activities including truck parking and container storage and that could presumably accommodate additional activity. These jurisdictions include, but may not be limited to, industrial areas of Oakland (for example, near the Airport), San Leandro, Hayward, Unincorporated Alameda County, Richmond, San Pablo, Unincorporated Contra Costa County, Tracy, French Camp, and Unincorporated San Joaquin County. These same jurisdictions accommodate many of the warehouses and related facilities that are the origin or destination of truck trips to/from the Port.
- Adjustment of logistics operations to eliminate use of truck parking or container staging. For some current users of Howard Terminal, Howard Terminal is an interim stop on the trip to or from the Seaport to wait for an appointment at a terminal, stage a container to wait for less congested traffic or for a warehouse to open, etc.

The FEIR goes on to state that it, "does not contain an analysis of zoning district locations or vacant/available land in these jurisdictions and is not required to do so because of the large number of potential relocation areas and because the lack of specific and reliable information sources on where existing truck parking tenants would locate to makes any assumptions of relocation areas speculative".

However, the FEIR concludes that localized truck-related activities would not move closer to nearby residents because (1) while the City's zoning allows truck uses in the in the "T" overlay zone, which is located directly north of Howard Terminal and south of 5th Street, parcels in the "T" overlay zone are currently occupied by other uses, including buildings and structures (e.g. utility infrastructure) that would preclude their use for parking and existing warehousing or fleet storage (e.g. bus yard) uses; and (2) the City's adopted

Truck Management Plan would prohibit long- or short-term truck parking on nearly all streets in West Oakland, and unattached trailers (chassis) would be prohibited throughout the City of Oakland.

BCDC staff have requested the Port to provide information on where ancillary port services and uses would be relocated if Howard Terminal is removed from Port Priority Use, including whether there is additional room for such uses at the Port, or whether the uses would be relocated elsewhere. BCDC staff also asked the Port to provide a statement and evaluation of whether the proposed removal of Howard Terminal from Port Priority Use is consistent with the Bay Plan's Environmental Justice and Social Equity policies, including any community engagement relating to the question of whether Howard Terminal is needed for Port Priority Use and how that feedback has been addressed. To date, BCDC has not received a response on these issues from the Port. See Appendix 1.

VII. Preliminary conclusions and discussion questions for the SPAC

As described in Section III, the Commission will need to determine whether Howard Terminal is needed for Port Priority Use. AB 1191 does not otherwise limit the authority or discretion of BCDC to consider amendments to the Seaport Plan or the Bay Plan, and thus, relevant Seaport Plan and Bay Plan policies apply to consideration of BPA 2-19 as they normally would.

There are several important aspects of this policy and the standards it provides the Commission for making a decision on BPA 2-19.

First, the SPAC's recommendation to the Commission should be based on a consideration of whether removing Howard Terminal from Port Priority Use would "detract from the regional capability to meet the projected growth in cargo" as per Seaport Plan General Policy #4. The SPAC's recommendation should thus consider the proposed amendment in that regional context.

Second, the impetus is on the "person or organization" requesting the deletion to provide a justification for the proposed deletion. In this case, the "person or organization" is the Oakland Athletics, although the Port of Oakland, being best suited to provide information relevant to the question whether Howard Terminal is needed for Port Priority Use, agreed to provide information on behalf of the applicant.

To assist the SPAC in the development of its recommendation, this BCDC staff report synthesizes information that staff had available, which primarily consists of the Cargo Forecast and other analysis previously undertaken by staff at the direction of the SPAC. In gathering the necessary information relevant to the question whether Howard Terminal is needed for Port Priority Use, BCDC staff communicated a number of questions to the Oakland Athletics, the Port of Oakland, and the City of Oakland, beginning in September 2021 and continued to reiterate these questions up to the present date, but have received limited substantive response to date. See Appendix 1.

Absent further information that would provide a justification for removing Howard Terminal from Port Priority Use, BCDC staff concur with the central findings of the Cargo Forecast that the SPAC previously voted 9-0-1 to accept for BCDC's planning purposes. The Cargo Forecast indicates that while there may be sufficient capacity at the Port of Oakland to accommodate Container cargo growth through 2050 under the Moderate Growth Scenario, the region as a whole lacks sufficient capacity to accommodate all three major cargo types (container, Ro-Ro, and dry bulk) through 2050 under the Moderate Growth scenario. Howard Terminal is the only identified dormant or underutilized possible expansion site in the Cargo Forecast that is potentially suited to handle any of the three major types of Cargo. In other words, it is the only identified dormant or underutilized possible expansion site in the Cargo Forecast that is potentially suited to also handle ro-ro and dry bulk cargo, for which the region as a whole lacks sufficient capacity to accommodate under the Moderate Growth scenario. Howard Terminal is also currently being used for a number of ancillary uses, and it is unclear whether relocating those uses would detract from the regional capability to meet the projected growth in cargo, without further information being provided by the Port. See Appendix 1.

A. Discussion questions for the SPAC

The following discussion questions are intended to guide the SPAC in its deliberations regarding the proposed amendment:

1. Would the deletion of Howard Terminal detract from the regional capability to meet the projected growth in cargo? Is Howard Terminal needed for Port Priority Use?
2. Does the SPAC have enough information to make a recommendation to the Commission regarding BPA 2-19? If not, what other information should the Applicant provide?
3. Is the proposed removal of the Port Priority Use Area designation from Howard Terminal consistent with all other relevant Seaport Plan and Bay Plan policies?
4. Are there any policy considerations or issues that have been missing from the discussion that staff should be aware of before developing the staff report and preliminary recommendation for the Commission?

VIII. Timeline and next steps for BPA 2-19

AB 1191 requires BCDC to make a decision on BPA 2-19 within 140 days of the certification of the City of Oaklands final EIR for the Oakland Waterfront Ballpark District at Howard Terminal. The final EIR was certified on February 17, creating a July 7 deadline for the Commission to make its final decision.

The following schedule will enable BCDC to adhere to this tight timeline:

Table 14: BPA 2-19 Timeline

Date	*Meeting/Deliverable*
March 16, 2022	SPAC Meeting #6
April 1, 2022	Mailing of the Commission Preliminary Recommendation Staff Report and Environmental Assessment
April 7, 2022	Commission Briefing: Background on the Cargo Forecast
May 5, 2022	Public Hearing
June 2, 2022	Public Hearing and Vote

This schedule allows for an additional Public Hearing date if needed, as well as time for BCDC staff to respond to public comment.

A. Additional discretionary approvals

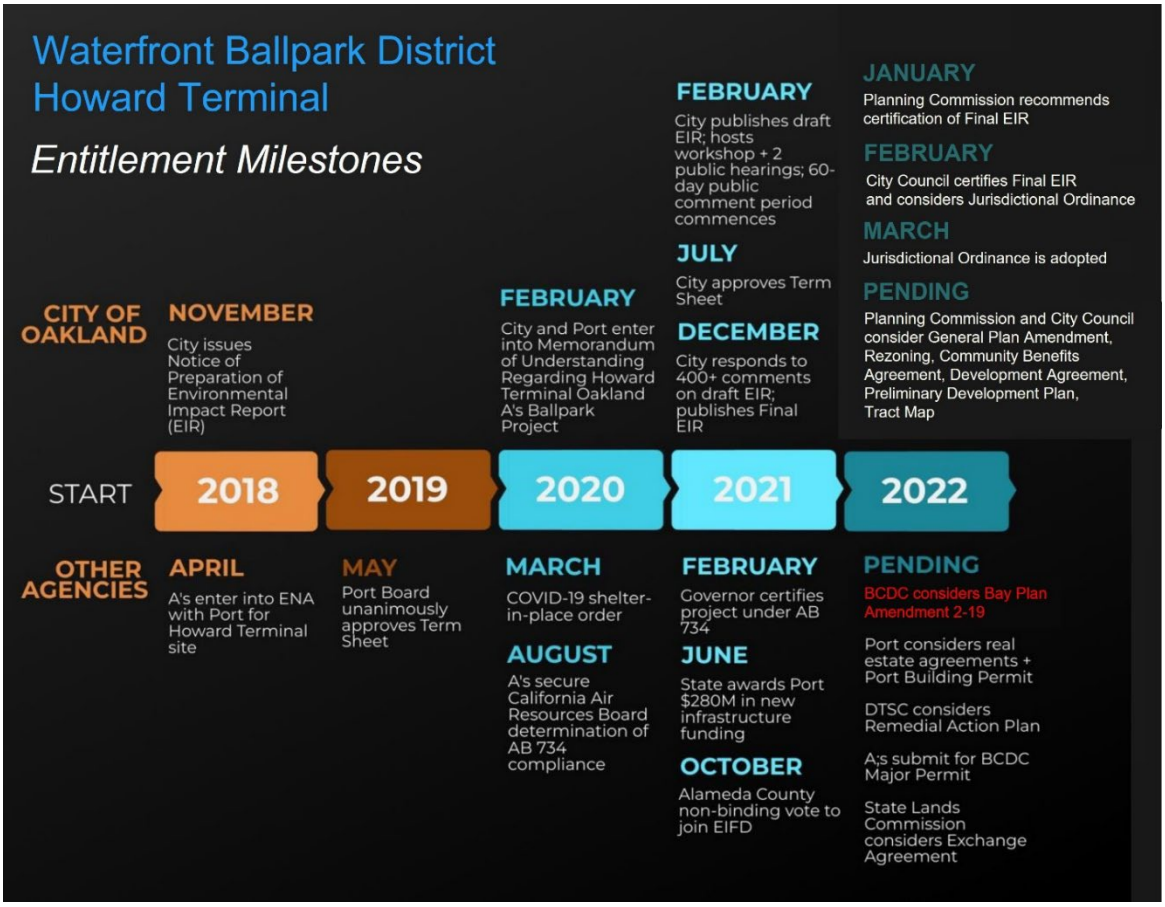
In addition to the Commission's adoption of BPA 2-19 to remove Howard Terminal from the Seaport Plan's Port Priority Use Area and the approval of a Major BCDC permit thereafter, numerous discretionary approvals from both the City and Port, as well as other state, regional, and local agencies will need to be in place for the Project to move forward.

Local discretionary approvals would include a General Plan Amendment and Rezoning; Planned Unit Development; Tentative Tract Map; Community Benefits Agreement; and a Development Agreement. Depending on the outcome of the ongoing negotiations between the City of Oakland and the Applicant, public meetings to discuss these approvals may commence as early as Summer 2022.

Additionally, the Ballpark Project will require Port building permits and a Port Disposition and Development Agreement; approval of a Remedial Action Plan and related plans by Department of Toxic Substances Control (DTSC); and completion of an exchange agreement with the State Lands Commission (SLC).

A summary of all major entitlement milestones accomplished to date and anticipated during this calendar year is presented in Figure 10, below.

Figure 10: Major Project Milestones



IX. Appendix 1: BCDC correspondence

Appendix 1

BCDC to Port of Oakland:

September 14, 2021

From: Mann, Cory@BCDC
To: Noah Rosen
Cc: Fain, Jessica@BCDC; Scourtis, Linda@BCDC
Subject: BPA 2-19 Howard Terminal meeting follow-up
Date: Tuesday, September 14, 2021 3:23:00 PM
Attachments: BPA 1-19 & 2-19 timeline.pdf

Hello Noah,

Thanks again for taking time to meet with BCDC staff on Sept 9th to discuss BPA 2-19. I'm following up with you, as well as the City of Oakland and the Port of Oakland, to provide a summary of our conversation to ensure you have the information needed to respond to our request. We met with the Port today, so we've now met with everyone.

As I mentioned during our call, the formation of the BCDC staff recommendation to the Commission on BPA 2-19 is based on several factors, including AB 1191, the McAteer-Petris Act, the Bay Plan, and the Seaport Plan. AB 1191 requires BCDC to determine whether Howard Terminal is no longer required for port priority use within 140 days of the City's certification of a Final EIR.

The Seaport Planning Advisory Committee (SPAC) has met five times since 2019 to advise BCDC on changes to the Seaport Plan and the associated 2019-2050 Bay Area Seaport Forecast. The forecast was developed by the Tioga Group and Hackett Associates and adopted by the SPAC at its third meeting in May 2020.

BCDC staff have assessed the cargo forecast's findings against the previously mentioned legislation, plans, and policies. Staff have identified several issues concerning the proposed BPA 2-19 amendment that, in the absence of further information, would make it difficult for us to recommend to the Commission to support as it currently stands. This includes but is not limited to:

- The Tioga forecast concludes that Howard Terminal would likely be needed for the Port of Oakland to retain sufficient capacity under the Moderate Growth scenario by 2050. Capacity at the Port of Oakland would be insufficient without Howard Terminal under the Strong Growth scenario, but Howard Terminal would not be needed under the Slow Growth scenario.
- For reference, Page 12 of the Executive Summary states:
    - "Oakland's Howard Terminal capacity may be required for container handling under the forecast scenarios, depending on what degree of other productivity improvement is implemented at other terminals. In addition to its terminal acreage, Howard's berth capacity may be required to handle larger vessels or additional services under a Strong Growth scenario, particularly if Berths 20-21 are used for dry bulk cargo. Howard Terminal may also be a logical expansion site for Ro-Ro vehicle handling. Howard could also handle dry bulk cargo under some circumstances, and Schnitzer Steel has expressed interest in using a portion of Howard to expand its adjacent operations."
- Howard Terminal is the only dormant or underutilized site identified in the forecast that could potentially be used for any of the three major cargo types (Container, Ro-Ro, or Dry Bulk). For reference, see "Exhibit 14: Bay Area Seaport Expansion Sites" in the forecast. The feasibility of Howard Terminal to accommodate cargo is also analyzed in detail in the forecast's appendix,

"Potential Role of Oakland's Howard Terminal".

- At present, Howard Terminal is being used for ancillary services, which are valid port priority uses under the existing Seaport Plan; this raises questions about where these uses would relocate if Howard Terminal were to be removed from the port priority use designation.

Based on this information, staff have reached a preliminary conclusion that Howard Terminal may be needed for port priority uses as the region experiences continued cargo growth, either as an active terminal or for directly related ancillary uses, given its flexible nature and ability to accommodate different types of cargo. Absent further information, BCDC staff are thus not prepared to make a recommendation to the Commission in favor of the BPA 2-19 amendment.

For BCDC staff to reconsider such a recommendation, the A's, in written agreement with the Port of Oakland and the City of Oakland, will need to offer a specific proposal to offset the loss of Howard Terminal such that BCDC staff could conclude that Howard Terminal is no longer needed for port priority use. As such a proposal may be outside the purview of the BPA Applicant (the Oakland Athletics), BCDC staff will require the Port of Oakland and the City of Oakland to participate in, agree to, and sign whatever proposal comes forth to offset the loss of Howard Terminal.

BCDC staff cannot make any guarantees about what offset, if any, the SPAC and the Commission would accept as means to determine that Howard Terminal is no longer needed for port priority uses. However, when asked to provide examples of possible offsets, BCDC staff responded that a proposal could include one or multiple measure, such as:

- Add a comparable cargo terminal to an area within BCDC's jurisdiction.
- Add acreage to Oakland's port priority use area to relocate impacted ancillary services or other measures to accommodate current and future ancillary services.
- Guarantee that the Port of Oakland will reach specific productivity benchmarks that would ensure the Port would not need to request permission from BCDC to use fill that otherwise would have been avoidable with the retention of Howard Terminal within the horizon of the cargo forecast.

As we emphasized during our conversation, whatever proposal is submitted must be specific and enforceable.

We also spoke about the timeline. As noted above, BCDC is required by AB 1191 to decide whether Howard Terminal is needed for port priority use within 140 days after the City of Oakland certifies the project's FEIR. Based on a working assumption that the City will certify the EIR on December 23, 2021, BCDC would need to receive a proposal by October 8th, 2021. Once the proposal is received, BCDC staff will evaluate it before making a recommendation to the SPAC and ultimately to the Commission, anticipated in early 2022. For reference, I've attached a tentative project timeline built on the December 23rd assumption. Please note these dates may change.

Thanks again for taking time to meet with us to discuss these issues and next steps. Hopefully this provides you with the information needed to work on a proposal, but if you have any questions or concerns, please don't hesitate to reach out.

Best,
Cory

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Rudder Law Group to BCDC:

October 7, 2021

RUDDER LAW GROUP
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October 7, 2021

Greg Scharff, Chief Counsel
SF BCDC
375 Beale Street, Ste. 510
San Francisco, CA 94105-2177

San Francisco Bay Conservation and Development Commission's ("BCDC")
Proposed "Offset" Requirements for Howard Terminal
Bay Plan Amendment ("BPA") 2-19

Dear Chief Counsel Scharff:

I am special counsel to the Port of Oakland ("Port") for certain land use permitting issues. I am following up on the email from BCDC Planning Analyst Cory Mann, dated September 14, 2021, and attached hereto as Exhibit A, concerning BCDC's determination as to whether Howard Terminal is "needed" for port priority uses and "offsets" that would be required if Howard Terminal were determined to be so needed.

The possible offsets identified in the subject email are:

- Add a comparable cargo terminal to an area within BCDC's jurisdiction.
- Add acreage to Oakland's port priority use area to relocate impacted ancillary services or other measures to accommodate current and future ancillary services.
- Guarantee that the Port of Oakland will reach specific productivity benchmarks that would ensure the Port would not need to request permission from BCDC to use fill that otherwise would have been avoidable with the retention of Howard Terminal within the horizon of the cargo forecast.

The Port has been asked to agree to a proposal for such a possible offset by October 8, 2021.

The introduction of, and commitment to, such a significant and complex "offset" at this date in the permitting process for the mixed-use ballpark project proposed by the Oakland Athletics Group LLC dba the Oakland Athletics ("Oakland A's") on Howard Terminal ("Proposed Project") and with such a short turnaround raises a number of concerns for the Port which we would like to address with you and/or BCDC staff as soon as possible. To that end, I understand a meeting between Port and BCDC representatives is currently scheduled for October 8, 2021, at 1:00 p.m., to discuss these matters.

1. Basis for BCDC's Determinations Regarding the Need for Port Priority Uses at Howard Terminal

In making a determination as to whether Howard Terminal is "needed" for port priority uses, the subject email appears to rely exclusively on the "Strong Growth" and "Moderate Growth" scenarios from the pre-Covid Tioga/Hackett forecast (but not on its "Slow Growth" scenario) (which, according to BCDC Staff, under all scenarios concluded that Howard Terminal is not an attractive container terminal location) (see the staff report to the BCDC Seaport Plan Advisory Committee ("SPAC") of November 7, 2019, at p. 7). It is unclear whether BCDC is considering the subsequent Mercator Report which, again according to BCDC Staff, concluded that Howard Terminal was unlikely to be commercially viable as a terminal location given the projected levels of throughput. *Id*.

In light of BCDC's focus on aspects of a private consultant report, we would like to remind BCDC that Section 706 of the Charter of the City of Oakland vests the Board of Port Commissioners ("Port Board") with the "complete and exclusive power" to make provisions for the needs of commerce, shipping, and navigation of the Port and to take charge of, control, and supervise the Port of Oakland, including all the waterfront properties, and lands adjacent thereto, etc. Further, the Port acts as an "arm" of the State of California in serving as trustee for the public trust lands within the Port Area and managing them for the People of the State of California. On the other hand, historically, BCDC has mandated and promoted the development and maintenance of public recreational uses at prime locations within the active Seaport area, e.g., the bicycle-pedestrian pathway on Seventh Street and the 40-acre Middle Harbor Shoreline Park.

It is important for BCDC to remember that, as stated in the Port's letter to BCDC from then-Port Executive Director Christopher Lytle and then-President of the Port Board Cestra "Ces" Butner, dated July 8, 2019:

> The [Port] Board's decision to continue to negotiate with the Oakland A's was a culmination of years of exploring the productive use of Howard terminal after the last container terminal operator requested termination of its lease for Howard Terminal in 2013. Because of the relatively short berthing space, the shallow depth at berth (42 feet compared to 50 feet at cargo ship terminals), smaller acreage of backlands available at the terminal, and the constrained location of the Howard Terminal within the greater seaport due to its separation from any adjacent Port owned marine terminal acreage to the west due to the existence of a privately owned recycling facility (Schnitzer Steel), a major rail line to the immediate north and the existing Jack London Square mixed-use commercial development to the east, the Howard Terminal is not suited to handle today's mega-container cargo ships. Moreover, due to the possible need to enlarge the [Inner] Harbor turning basin to accommodate the growing size of the terminal cargo ships that call at other marine terminals in the seaport, Howard Terminal may potentially be the site for excavation to

expand the turning basin water area, if determined feasible. Such enlargement of the turning basin would further limit the capacity at Howard Terminal for cargo terminal operations.

As you may know, the Port's Executive Director, Danny Wan, made a presentation to the SPAC on May 11, 2020, and provided an update on the Port's operations and revenues as a result of the Covid-19 pandemic and reiterated the need for flexibility from regulatory agencies as the Port attempts to adjust to the challenging economics facing its operations and the uncertainties of the future. Mr. Wan specifically mentioned that any capacity or growth forecast studies for Bay Area seaports that were prepared pre-Covid-19 are no longer valid due to the changes that have occurred since the onset of the pandemic and the uncertain forecasts for the global economy.

Again, on October 29, 2020, Mr. Wan and Maritime Director Bryan Brandes both attended and participated in the SPAC meeting discussion of Seaport Plan alternatives analysis. The Port's Executive Director emphasized the need for flexibility with respect to allowable uses on all of the lands held by the Port and designated as port priority use in light of the rapidly changing global economy in which the Port must operate, and the challenges in predicting future trends and growth in volumes as far as 30 years into the future. The Port and its Maritime Division continue to have their fingers on the pulse of global maritime commerce and to evaluate the ongoing impacts of the pandemic.

Furthermore, as stated in the current Fiscal Year 2022 Budget Book recently adopted by the Port Board and posted on the Port of Oakland website, during the past 20 years total Twenty-foot Equivalent Unit ("TEU") volume growth for the Port of Oakland's Seaport, has averaged less than 2% per year and, during the most recent 10-year period from 2010-2020, the total TEU volume growth for the Port of Oakland has averaged approximately 1% per year. This same Fiscal Year 2021-2022 Budget forecasts a 1% increase in total TEU volume for the Seaport for the next upcoming four Fiscal Years of FY22-23, FY23-24, FY24-25, and FY25-26. Thus, it seems that the TEU volume growth assumptions being used by BCDC to make recommendations regarding the future growth needs of the Port of Oakland differ significantly from those experienced by the Port in the recent past as well as those anticipated by the Port for the immediate future.

The Port is currently developing its own Port of Oakland Seaport plan with planning horizons for the years 2030 and 2050. The Port's planning effort is comprehensive and encompasses a wide range of in-depth technical studies. These include a Market Analysis and Terminal Capacity Study, which assess the current trends in the market, including growth, which will provide Oakland-specific data for the future of maritime commerce at the Seaport. Additional technical studies under development include a Land Use Study, Long-Term Transportation and Circulation Study, Truck Parking Study, Economic Impact Study, Utility Condition Assessment, and a continuation of the Port's Air Quality 2020 & Beyond Plan implementation as well as an assessment

of future sea level rise. BCDC has been apprised of and has been participating in these efforts.

Based upon the Port's clear land use authority, expertise in Maritime operations and in comprehensive systems-based planning for maritime business, land use, and operations, it would not be appropriate or reasonable for BCDC to refuse to defer to the Port of Oakland as the authority in making land use determinations as to the most appropriate uses at Howard Terminal, including the need for and sufficiency of any "offset."

What statute, regulation, or policy would BCDC be relying on to counter the Port Board's clear authority and expertise in these matters?

2. Application of BCDC's "Offset" Requirement

If BCDC were to determine that Howard Terminal is not "needed" for port priority uses, it is the Port's understanding that no "offset" would be required to lift the port priority use designation from any part of Howard Terminal. Is that correct?

3. Scope of BCDC's Authority to Impose an "Offset" Requirement at Howard Terminal

It is unclear what specific portion of Howard Terminal is being referred to when referencing its "need" for port priority uses when it comes to a required "offset." Is BCDC referring to the entire 55-acre Proposed Project site? If so, what is the basis for BCDC's jurisdiction beyond the historical 100-foot shoreline band? Or is BCDC referring to only the roughly 17 acres of the Proposed Project site within BCDC's jurisdiction? Further, to what extent will BCDC consider Policy 2 from its Port Priority Use Area section of the Seaport Plan to determine whether the public access and commercial recreation uses proposed as part of the Proposed Project may be properly considered as consistent with the port priority use designation so long as they do not "significantly impair" port purposes?

4. Legal Basis for BCDC's Offset Requirement

What statute, regulation, or policy is BCDC relying upon to introduce and apply the "offset" requirement?

5. Scope and Precedent for BCDC's "Offset" Requirements

When, where, and how has BCDC mandated such an "offset" for other projects? Are "offsets" being required in other port areas covered by BPA 1-19? Does BCDC have any examples of commitments to "productivity benchmarks" that it has used as offsets for other projects?

6. Environmental Review of "Offsets" Required by BCDC

Of the possible offsets being contemplated by BCDC staff, the Port of Oakland's commitment to a course of action to provide for the addition of a "comparable cargo terminal" or the "relocation" or development of "ancillary services" with the City of Oakland will have potentially significant environmental impacts. BCDC is assuming that the City of Oakland will certify the Final EIR for the Proposed Project on December 23, 2021. How does BCDC propose to move forward on these new offset conditions of approval without causing the initiation of additional environmental review under CEQA? Given the extensive planning and subsequent environmental review that would be required for commitment to such offsets, we believe that this approach by BCDC would significantly delay the approval timeline for the Proposed Project.

7. Interplay Between BPA 1-19 and BPA 2-19

Does BCDC anticipate that Bay Plan Amendment Number 1-19 will be adopted prior to consideration of the proposed BPA 2-19? If not, would delays in processing of BPA 2-19 related to development of acceptable "offsets" require a material revision to BPA 2-19 to key it to the new BCDC Seaport Plan?

8. BCDC Proposals for Comparable Cargo Terminal "Offsets"

Does BCDC staff have any proposals as to the size, location, and capabilities of a "comparable cargo terminal" to offset Howard Terminal?

9. BCDC Proposals for "Ancillary Services" "Offsets"

Does BCDC staff have any proposals as to the acreage, location, and scope of "ancillary services" to offset Howard Terminal?

10. BCDC Proposals for "Productivity Benchmark" "Offsets"

Does BCDC staff have any proposals as to the "productivity benchmarks" to which the Port would commit to offset Howard Terminal?

▪ ▪ ▪

I am aware that these are a lot of substantive issues of concern, but these have necessarily been raised by BCDC staff's interjecting – at the 11th hour in the multi-year planning effort for the Proposed Project – the notion of an "offset" as a condition of its approval of the Proposed Project. Absent substantive and meaningful responses from BCDC that provide the basis for BCDC's position and the facts and substantial evidence in the record underlying that position, the Port questions how BCDC's last-minute offset requirement with an attendant unrealistic timeframe for a substantive and binding response from the Port would not be considered an arbitrary and capricious decision made without due process of law.

I look forward to hearing back from BCDC in this regard at your earliest convenience.

Very truly yours,

Joshua Safran, Esq.

cc: Larry Goldzband, Executive Director, BCDC
Michael Ng, Senior Staff Counsel, BCDC
Jessica Fain, Director of Planning, BCDC
Linda Scourtis, Maritime and Oil Spill Programs Manager, BCDC
Cory Mann, Planning Analyst, BCDC

Danny Wan, Executive Director, Port of Oakland
Kristi McKenney, Chief Operating Officer, Port of Oakland
Matt Davis, Governmental Affairs Director, Port of Oakland
Bryan Brandes, Maritime Director, Port of Oakland
Pamela Kershaw, Commercial Real Estate Director, Port of Oakland
Amy Tharpe, Director of Social Responsibility, Port of Oakland
Richard Sinkoff, Director of Env. Programs and Planning, Port of Oakland
Andrea Gardner, Port Env. Supervisor, Port of Oakland
Michele Heffes, Port Attorney, Port of Oakland
Eugene Park, Deputy Port Attorney, Port of Oakland

EXHIBIT

A

From: Mann, Cory@BCDC <cory.mann@bcdc.ca.gov>
Sent: Tuesday, September 14, 2021 3:42 PM
To: Andrea Gardner <agardner@portoakland.com>; Bryan Brandes <bbrandes@portoakland.com>
Cc: Fain, Jessica@BCDC <jessica.fain@bcdc.ca.gov>; Scourtis, Linda@BCDC <linda.scourtis@bcdc.ca.gov>
Subject: [EXTERNAL] BPA 2-19 Howard Terminal meeting follow-up

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Hello Andrea and Bryan,

Thanks again for taking time to meet with us today to discuss BPA 2-19. I'm following up with you, as well as the A's and the City of Oakland, to provide a summary of our conversation to ensure you have the information needed to respond to our request.

As I mentioned during our call, the formation of the BCDC staff recommendation to the Commission on BPA 2-19 is based on several factors, including AB 1191, the McAteer-Petris Act, the Bay Plan, and the Seaport Plan. AB 1191 requires BCDC to determine whether Howard Terminal is no longer required for port priority use within 140 days of the City's certification of a Final EIR.

The Seaport Planning Advisory Committee (SPAC) has met five times since 2019 to advise BCDC on changes to the Seaport Plan and the associated 2019-2050 Bay Area Seaport Forecast. The forecast was developed by the Tioga Group and Hackett Associates and adopted by the SPAC at its third meeting in May 2020.

BCDC staff have assessed the cargo forecast's findings against the previously mentioned legislation, plans, and policies. Staff have identified several issues concerning the proposed BPA 2-19 amendment that, in the absence of further information, would make it difficult for us to recommend to the Commission to support as it currently stands. This includes but is not limited to:

- The Tioga forecast concludes that Howard Terminal would likely be needed for the Port of Oakland to retain sufficient capacity under the Moderate Growth scenario by 2050. Capacity at the Port of Oakland would be insufficient without Howard Terminal under the Strong Growth scenario, but Howard Terminal would not be needed under the Slow Growth scenario.
- For reference, Page 12 of the Executive Summary states:
    - "Oakland's Howard Terminal capacity may be required for container handling under the forecast scenarios, depending on what degree of other productivity improvement is implemented at other terminals. In addition to its terminal acreage, Howard's berth capacity may be required to handle larger vessels or additional services under a Strong Growth scenario, particularly if Berths 20-21 are used for dry bulk cargo. Howard Terminal may also be a logical expansion site for Ro-Ro vehicle handling. Howard could also handle dry bulk cargo under some circumstances, and Schnitzer Steel has expressed interest in using a portion of Howard to expand its adjacent operations."
- Howard Terminal is the only dormant or underutilized site identified in the forecast that could potentially be used for any of the three major cargo types (Container, Ro-Ro, or Dry Bulk). For reference, see "Exhibit 14: Bay Area Seaport Expansion Sites" in the forecast. The feasibility of Howard Terminal to accommodate cargo is also analyzed in detail in the forecast's appendix, "Potential Role of Oakland's Howard Terminal".

- At present, Howard Terminal is being used for ancillary services, which are valid port priority uses under the existing Seaport Plan; this raises questions about where these uses would relocate if Howard Terminal were to be removed from the port priority use designation.

Based on this information, staff have reached a preliminary conclusion that Howard Terminal may be needed for port priority uses as the region experiences continued cargo growth, either as an active terminal or for directly related ancillary uses, given its flexible nature and ability to accommodate different types of cargo. Absent further information, BCDC staff are thus not prepared to make a recommendation to the Commission in favor of the BPA 2-19 amendment.

For BCDC staff to reconsider such a recommendation, the A's, in written agreement with the Port of Oakland and the City of Oakland, will need to offer a specific proposal to offset the loss of Howard Terminal such that BCDC staff could conclude that Howard Terminal is no longer needed for port priority use. As such a proposal may be outside the purview of the BPA Applicant (the Oakland Athletics), BCDC staff will require the Port of Oakland and the City of Oakland to participate in, agree to, and sign whatever proposal comes forth to offset the loss of Howard Terminal.

BCDC staff cannot make any guarantees about what offset, if any, the SPAC and the Commission would accept as means to determine that Howard Terminal is no longer needed for port priority uses. However, when asked to provide examples of possible offsets, BCDC staff responded that a proposal could include one or multiple measure, such as:

- Add a comparable cargo terminal to an area within BCDC's jurisdiction.
- Add acreage to Oakland's port priority use area to relocate impacted ancillary services or other measures to accommodate current and future ancillary services.
- Guarantee that the Port of Oakland will reach specific productivity benchmarks that would ensure the Port would not need to request permission from BCDC to use fill that otherwise would have been avoidable with the retention of Howard Terminal within the horizon of the cargo forecast.

As we emphasized during our conversation, whatever proposal is submitted must be specific and enforceable.

We also spoke about the timeline. As noted above, BCDC is required by AB 1191 to decide whether Howard Terminal is needed for port priority use within 140 days after the City of Oakland certifies the project's FEIR. Based on a working assumption that the City will certify the EIR on December 23, 2021, BCDC would need to receive a proposal by October 8th, 2021. Once the proposal is received, BCDC staff will evaluate it before making a recommendation to the SPAC and ultimately to the Commission, anticipated in early 2022. For reference, I've attached a tentative project timeline built on the December 23rd assumption. Please note these dates may change.

Thanks again for taking time to meet with us to discuss these issues and next steps. Hopefully this provides you with the information needed to work on a proposal, but if you have any questions or concerns, please don't hesitate to reach out.

Best,
Cory

Cory Mann
Planning Analyst
Direct: (415) 352-3649 | cory.mann@bcdc.ca.gov

San Francisco Bay Conservation and Development Commission
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BCDC to Rudder Law Group

October 21, 2021

San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

October 21, 2021

Joshua Safran
Rudder Law Group
1101 Marina Village Parkway, Suite 201
Alameda, CA 94501

SUBJECT: Howard Terminal, Response to Letter dated October 7, 2021

Dear Mr. Safran:

Thank you for your letter of October 7, 2021. I am glad that you reached out so that I can clarify what appear to be misconceptions surrounding BCDC staff's communications with the Port regarding both the ongoing Bay Area Seaport Plan (Seaport Plan) amendment process and the intent of those communications.

BCDC PROCESS

To be clear, BCDC's Bay Plan amendment process conforms with state laws and past practices. BCDC always has viewed seaports as a critical water-oriented land use essential to a thriving Bay Area economy. As a land use authority, BCDC regularly assumes the important role of reviewing and updating the *San Francisco Bay Area Seaport Plan* (Seaport Plan), a component of the *San Francisco Bay Plan* (Bay Plan), which is designed to ensure that Bay Area ports reserve sufficient shoreline areas to accommodate any future expansion necessary to enable the growth of maritime commerce. Doing so reduces the potential need for BCDC to approve new fill in the Bay, which is a central tenet of BCDC's mission to conserve and develop the Bay's resources as established in the McAteer-Petris Act and the Bay Plan.

In 2019, BCDC initiated two amendment processes to fulfill that responsibility. One of those two Bay Plan amendments, Bay Plan Amendment 2-19 (BPA 2-19), was proposed by the Oakland Athletics to remove the "port priority use" designation from Howard Terminal at the Port of Oakland. In 2019, the State Legislature approved, and the Governor signed, AB 1191 that requires BCDC to determine whether Howard Terminal is needed for port priority use within 140 days of certification of the City of Oakland's Final Environmental Impact Report for the proposed Waterfront Ballpark District project. Simply put, the State of California has entrusted the Commission to make the Howard Terminal determination based upon the substantial and analytically significant public input process that all proposed Bay Plan amendments go through. It is also important to keep in mind that the Commissioners, not BCDC staff, will determine whether Howard Terminal should continue to be designated as required for port priority use.

As all the BPA stakeholders know, the BCDC staff recommendation to the Commission regarding BPA 2-19 will be based on several factors. These include consistency with the Bay Plan, the Seaport Plan, the McAteer-Petris Act, the California Environmental Quality Act, and AB 1191. Of particular relevance to this discussion, General Policy 4 of the Seaport Plan states:

"Deletions of the port priority use and marine terminal designations from this plan should not occur unless the person or organization requesting the deletion can demonstrate to the satisfaction of the Seaport Planning Advisory Committee that the deletion does not detract from the regional capability to meet the projected growth in cargo. Requests for deletions of port priority or marine terminal designations should include a justification for the proposed deletion, and should demonstrate that the [Seaport Plan's] cargo forecast can be met with existing terminals."

CARGO FORECAST PROCESS

Since the Commission began to consider BPA 2-19 on January 17, 2019, BCDC staff has included the Oakland Athletics, the Port of Oakland, and the City of Oakland in the planning process. While the Athletics organization is the BPA applicant, we believe it is critical that the Port and the City also be at the table as central stakeholders to provide expertise and critical information on the Port's operations and the Port's role within city government. In addition, the Port is a crucial member of the Seaport Planning Advisory Committee (SPAC), which has the responsibility of analyzing much of the information collected through the BPA process. Ultimately, we expect that the Port will provide public comments throughout the Commission's deliberations, and it was within this framework of encouraging cooperative and collaborative planning that we sent our September 14, 2021, email and expected to meet the Port soon thereafter on October 8, 2021.

The purpose of the e-mail communication in question was to explain to the Port, the Athletics, and the City of Oakland that BCDC staff would be hard-pressed to recommend that the Commission adopt BPA 2-19 given the information available to BCDC staff at this time, and give the Athletics as the applicant, and the Port and the City as major stakeholders, the opportunity to demonstrate that removing Howard Terminal from the port priority use area would not detract from the region's capability to meet projected cargo growth. Given the results of the 2019-2050 Bay Area Seaport Forecast (Cargo Forecast) prepared by Tioga and subsequent SPAC discussions (each involving the participation of the Port and the Athletics), BCDC staff assumed that the Athletics, the Port, and the City would have considered the possibility that our findings could ultimately lead the Commission to determine that the terminal would be needed for port priority use. That is what prompted BCDC staff to send the note to all three stakeholders inviting them to further engage with us and provide analyses and ideas to address concerns about the region's long-term maritime land use requirements.

BCDC staff's concerns are based on analyses and discussions centered on the information contained in the Tioga Cargo Forecast that was approved on a vote of 9-0-1 by the SPAC at its May 11, 2020 meeting. Those concerns include, but are not limited to, the following issues noted in the email in question:

(1) The forecast concluded that Howard Terminal would not be needed for the Bay Area to maintain sufficient capacity under the Slow Growth scenario by 2050, that Howard Terminal would likely be needed under the Moderate Growth scenario by 2050, and that Howard Terminal would be needed under the Strong Growth scenario by 2050. For reference, in our email, we cited Page 12 of the Executive Summary of the Cargo Forecast, which states:

> "Oakland's Howard Terminal capacity may be required for container handling under the forecast scenarios, depending on what degree of other productivity improvement is implemented at other terminals. In addition to its terminal acreage, Howard's berth capacity may be required to handle larger vessels or additional services under a Strong Growth scenario, particularly if Berths 20-21 are used for dry bulk cargo. Howard Terminal may also be a logical expansion site for Ro-Ro vehicle handling. Howard could also handle dry bulk cargo under some circumstances, and Schnitzer Steel has expressed interest in using a portion of Howard to expand its adjacent operations."

(2) Howard Terminal is the only dormant or underutilized site identified in the Cargo Forecast that could potentially be used for any of the three major cargo types (container, ro-ro, or dry bulk). For reference, our email cited "Exhibit 14: Bay Area Seaport Expansion Sites" from the forecast. The feasibility of Howard Terminal as a cargo terminal is also analyzed in detail in the forecast's appendix, "Potential Role of Oakland's Howard Terminal."

(3) At present, Howard Terminal is being used for ancillary services, which are valid port priority uses under the existing Seaport Plan. This raises questions about where the Port would relocate these uses if Howard Terminal were to be removed from the Port priority use designation.

The other cargo assessment commissioned by the Athletics and prepared by Mercator International that you mentioned in your letter was considered as part of the extensive review process for the Cargo Forecast prior to SPAC approval. The SPAC's review process found that the projections included in that report were not appropriate for the Seaport Plan update process. A sizable amount of staff, consultant, and SPAC resources, including a blind peer-review process and interviews with terminal operators, were used to evaluate the methodological differences between Mercator's assessment and the draft Cargo Forecast, as well as the feasibility of the Cargo Forecast's projections in light of Mercator's critiques. Ultimately, as noted above, the SPAC voted to accept the in-force Cargo Forecast at its May 11, 2020, meeting, and the representative of the Port of Oakland voted with the overwhelming majority to do so.

HOWARD TERMINAL SITE ISSUE

BCDC staff utilized the SPAC's approved forecast to develop a set of alternatives for the port priority use designations in our March 16, 2021, staff report to the SPAC. The report analyzed proposed changes related to cargo throughput, port planning and operations, land use consistency and compatibility, public access, environmental justice, climate change, and Bay fill. The staff report also outlined the reasoning for focusing on the Moderate Growth scenario specifically. The report states, "[f]or the Alternatives analysis, staff focused on the moderate growth scenarios. If the Bay Area were to plan to meet the severe capacity shortages projected to result from the strong growth scenarios, it would be contemplating immense investments of

capital or land, and there is no clear basis that actual growth would warrant that level of investment. If the Bay Area were to plan to meet the slow growth projections, it could be vulnerable to additional capacity shortfalls if actual growth is greater" (p. 30). This methodology was presented at the fifth SPAC meeting on March 26, 2021, and no SPAC members objected to BCDC using it.

Based on this information and analysis, BCDC staff has reached a preliminary conclusion that Howard Terminal may be needed for port priority use as the region experiences continued cargo growth, either as an active terminal for container, ro-ro, or dry bulk cargo, or for directly-related ancillary uses.

CONTINUED COLLABORATION

Why, given this preliminary analysis, are BCDC staff pursuing further discussions with the Athletics, the Port, and the City? We believe that the Commissioners who will ultimately make the decisions regarding BPA 2-19 will ask both BCDC staff and representatives of these three stakeholders whether there are any alternatives to using Howard Terminal that would ameliorate the concerns raised by the proposal. Simply put, we believe that the Commissioners would prefer to decide on Howard Terminal's future role based on an analysis of alternatives rather than a binary "yes or no" presentation. Therefore, we are inviting the three key stakeholders to provide BCDC staff with new information that demonstrates how, under a moderate growth scenario and with base productivity assumptions as described in the Cargo Forecast, Howard Terminal would not be needed for port priority use. For that analysis to be persuasive, the applicant would need to provide a compelling argument using the SPAC-approved Cargo Forecast as a basis, with any amendment proposals supported by specific and enforceable conditions, that demonstrates that deleting Howard Terminal from port priority use will not detract from the region's capabilities to meet projected cargo growth or lead to additional Bay fill.

Unfortunately, the Port appears to believe that BCDC staff are asking for "offsets" as a condition of approval. That is not the case; BCDC staff has not and will not make any such demands, nor will it require any information along these grounds from the Port. Instead, BCDC staff is simply trying to communicate to the Athletics, Port, the City, and other stakeholders the current state of our analysis and its implications. Our goal is to provide early guidance and give the applicant an opportunity to create a path forward for its proposal with the knowledge that BCDC staff's preliminary analysis is that Howard Terminal may be needed for port priority use. Moving down that path will likely require all three stakeholders to agree on the means of demonstrating that deleting a port priority use designation would not reduce the region's capacity and capability to meet the projected cargo growth.

The suggestions included in the referenced e-mail communication were examples that BCDC staff provided to help Port staff understand a variety of strategies that could be undertaken to address the identified challenge. This approach is similar to previous Bay Plan amendments processes during which BCDC staff worked with applicants to designate new areas for port priority uses to ensure that cargo capacity reductions would not result from removing existing sites from port priority use. Indeed, BCDC has worked with the Port of Oakland on such

amendments in the past (please see pages 22-25 of the May 1, 2020, staff report to the SPAC for specific examples). Regarding productivity benchmarks, BCDC staff do not have examples of productivity benchmarks in other amendments – that was given as a suggestion to encourage creative problem solving on the part of the applicant.

In summary, BCDC staff want to continue to engage with the Athletics, the Port, and the City of Oakland, and other stakeholders to provide the Commission with as much information and analysis, and as many options as possible, to help Commissioners make their determination as required by the State of California. We look forward to continuing those discussions, and I hope this letter remedies any misunderstandings the Port has had regarding the planning process. I would be happy to talk with you further about this issue in the hope that Port staff and other stakeholders can resume working with BCDC staff in a cooperative manner to provide the Commission with the best possible analyses upon which to base their ultimate decision.

I look forward to hearing from you at your earliest convenience.

Sincerely,

DocuSigned by:
Gregory Scharff
66D27556691542...

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Linda Scourtis, Oil Spill Specialist
Cory Mann, Planning Analyst

GS/gg

Oakland Athletics to BCDC

February 2, 2022*

***Received February 4, 2022**

OAKLAND ATHLETICS

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Cory Mann
Planning Analyst
San Francisco Bay Conservation and Development Commission
Bay Area Metro Center
375 Beale Street, Ste. 510
San Francisco, CA 94105

February 2, 2022

Re: Oakland Waterfront Ballpark District Seaport Plan Amendment

Dear Mr. Mann,

As you know, BCDC recently requested additional information from the Port of Oakland in support of Bay Plan Amendment 2-19 concerning the removal of Howard Terminal from the Seaport Plan. Attached here is a memo from the Port of Oakland providing this information.

Please let me know if any questions come up in the course of your review.

All the best,

Noah Rosen

Sr. Manager, Project Development
Oakland Athletics
Oakland Coliseum | 7000 Coliseum way, Oakland

Attachment A
Port of Oakland Analysis regarding Howard Terminal and Port Priority Use

PORT OF OAKLAND

MEMORANDUM

To: Noah Rosen, Oakland Athletics

From: Andrea Gardner, Port of Oakland

Date: February 2, 2022

Subject: Port of Oakland Analysis regarding Howard Terminal and Port Priority Use

Introduction

On January 17, 2019, the Oakland Athletics ("Oakland A's") applied to the Bay Conservation and Development Commission ("BCDC" or "Commission")[1] to amend the San Francisco Bay Plan ("Bay Plan") and the San Francisco Bay Area Seaport Plan ("Seaport Plan") by removing the Port Priority Use ("PPU") area designation from the Howard Terminal at the Port of Oakland ("Port"). As noted in the January 4, 2019, BCDC Staff Report, "to approve the requested amendment, the Commission must determine that eliminating the potential future use of the area for port purposes will not negatively affect the region's cargo handling capacity and will not increase the need to fill the Bay for future port development."

In addition, Assembly Bill ("AB") 1191[2] states that BCDC shall determine "whether the Howard Terminal property and adjacent areas designated for port priority use, or portions of them, are no longer required for port priority use and shall be deemed free of the port priority use area designation for purposes of the Oakland Sports and Mixed-Use Project, or whether these areas are needed for port priority use and should continue in port priority use designation."

BCDC staff requested that the Port of Oakland work with the Oakland A's to provide information that can demonstrate that Howard Terminal is no longer required for port priority use, as noted above. As a result, Port staff reviewed BCDC's materials regarding whether Howard Terminal is necessary to meet regional container cargo capacity based on BCDC assumptions, analyses, and documentation, including BCDC's approved *2019-2050 Bay Area Seaport Forecast*[3] and BCDC Seaport Planning Advisory Committee ("SPAC") staff reports.

[1] Bay Plan Amendment Number 2-19 (January 17, 2019)
[2] Assembly Bill 1191 (Stats. 2019, ch. 752). "Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act."
[3] *2019-2050 Bay Area Seaport Plan Forecast*; prepared by The Tioga Group and Hackett Associates for the SF Bay Conservation and Development Commission. May 22, 2020.

Based on such review, Port staff concurs with BCDC's materials that illustrate that Howard Terminal is not necessary for meeting regional container cargo capacity utilizing BCDC provided information. This memorandum provides further details from such review.

Based on the 2019-2050 Bay Area Seaport Plan Forecast, the Port of Oakland is able to meet the moderate growth container cargo scenario.

BCDC staff have indicated that they will use the Moderate Growth Forecast in the Seaport Plan Forecast to evaluate the proposed amendments to the Seaport Plan[4]. This forecast assumes a compound annual growth rate ("CAGR") of 2.2% from the Port's 2018 throughput of approximately 2.55 million twenty-foot equivalent units ("TEUs"), resulting in a forecasted throughput of 5.19 million TEUs in 2050.

Exhibit 95 of the Seaport Plan Forecast shows the calculated container capacity for the Port with and without Howard Terminal and Berths 20-21 Area (where the Eagle Rock Aggregates ["ERA"] project is proposed). The capacity is calculated for different assumptions of terminal productivity ("Configuration Scenarios").

Exhibit 95: Estimated Sustained Capacity at Port of Oakland by Port Configuration Scenario

Estimated Annual Sustainable TEU Capacity for:	2018 Capacity Estimate	Phase 1: Low-Cost Horizontal Expansion on Available Terminal Acres	Phase II: 150 Acres High Productivity at OICT or OHT	Phase III: High Productivity at OICT & OHT	Phase IV: High Productivity at OICT, OHT, Ben Nutter	Phase V: High Productivity at OICT, OHT, Ben Nutter, TraPac	Phase VI: High Productivity at all Terminals
All Potential Terminal Acres	3,954,322	5,327,998	5,380,363	5,494,877	5,522,825	5,563,204	5,597,348
Potential Terminal Acres w/o Howard	3,954,322	5,061,265	5,113,629	5,228,144	5,256,092	5,296,470	5,312,858
Potential Terminal Acres w/o Berths 20-21	3,954,322	5,194,632	5,246,996	5,352,632	5,380,580	5,420,959	5,455,103
Potential Terminal Acres w/o Howard or Berths 20-21	3,954,322	4,927,898	4,980,263	5,085,898	5,113,847	5,154,225	5,170,613

Exhibit 104 of the Seaport Plan Forecast shows required terminal acreage assuming Moderate Growth and Configuration Scenario VI from Exhibit 95. As can be seen from Exhibit 104, the Port will have sufficient acreage to meet forecasted container throughput with the removal of Howard Terminal from PPU.

[4] In addition to Bay Plan Amendment Number 2-19 regarding removal of Howard Terminal from PPU, BCDC is considering Bay Plan Amendment Number 1-19 (January 17, 2019) to provide an overall update to the Seaport Plan and add or remove lands from PPU as requested by other Bay Area ports.

Exhibit 104: Container Cargo Annual Growth and Acreage Requirements

Container Terminal Acres	2050 Acres Available*	Moderate Growth		Slow Growth		Strong Growth	
		Required	Reserve	Required	Reserve	Required	Reserve
All Potential Terminal Acres	787	729	58	543	244	990	(203)
Potential Terminal Acres w/o Howard	747	729	18	543	204	990	(243)
Potential Terminal Acres w/o Berths 20-21	767	729	38	543	224	990	(223)
Potential Terminal Acres w/o Howard or Berths 20-21	727	729	(2)	543	184	990	(263)

* Post-electrification

Exhibit 104 also shows that the Port would require 2 acres to avoid a capacity shortfall without use of Berths 20-21 or Howard Terminal for container cargo. Two factors related to the proposed lease for ERA change this conclusion:

- The Seaport Plan Forecast assumes the area used by the ERA project at Berths 20-21 would be 20 acres. However, the proposed ERA lease includes only 18 acres[5]. Thus, if the ERA lease were approved and Howard Terminal were not in the PPU, there would be no deficit in the projected Year 2050 acreage need under BCDC's 2050 Moderate Growth Forecast.

- While no acreage deficit in 2050 under the Moderate Growth Forecast is foreseen or projected, as further protection, the proposed ERA lease has "off-ramps" that would allow the Port to convert the leasehold area to container cargo operations, if needed. The initial lease is for a 12-year term, followed by a 10-year option and a 5-year option. Based on these options under the proposed ERA lease, the Port would have sufficient capacity at each of these decision points under the Moderate Growth Forecast and could choose to not approve the options if growth proves to be stronger than forecast.

    - In 2034 (at the end of the 12-year initial lease), the Port would be handling approximately 3.57 million TEU, which is within existing Port capacity as shown in Exhibit 95.

    - In 2044 (at the end of the 10-year option), the Port would be handling approximately 4.53 million TEU, which is within the Phase 1 Configuration Scenario capacity without Howard Terminal or Berths 20-21 (see Exhibit 95).

    - In 2049 (at the end of the 5-year option), the Port would be handling approximately 5.07 million TEU, which is within the Phase III through Phase VI Configuration Scenario capacities without Howard Terminal or Berths 20-21 (see Exhibit 95)

[5] Board of Port Commissioners, Agenda Report, December 16, 2021

BCDC to Port of Oakland and Oakland Athletics

February 18, 2022

San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

February 18, 2022

Via electronic mail only: nrosen@athletics.com and agardner@portoakland.com

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SUBJECT: Oakland Athletics Bay Plan Amendment 2-19 (Howard Terminal) Port of Oakland Memorandum

Dear Noah and Andrea:

Thank you for your February 2, 2022, memorandum providing additional information from the Port of Oakland in support of Bay Plan Amendment (BPA) 2-19 concerning the proposed removal of the Port Priority Use Area designation from Howard Terminal. The memorandum provided additional information regarding the proposed Eagle Rock Aggregates (ERA) project at Berths 20-21 and its relationship with regional cargo capacity. We will acknowledge that the project size of the Eagle Rock Aggregates project has been reduced from the 20-acre estimate to 18 acres in the BCDC staff report and preliminary recommendation to the SPAC and, ultimately, the Commission. The memorandum also provided information regarding the proposed ERA lease "off-ramps" as they relate to growth projected in the Cargo Forecast.[1]

As you are aware, AB 1191 (Bonta) requires the Commission to determine "whether the Howard Terminal property and adjacent areas designated for port priority use, or portions of them, are no longer required for port priority use and shall be deemed free of the port priority

[1] *2019-2050 Bay Area Seaport Plan Forecast*, prepared by the Tioga Group and Hackett Associates, May 22, 2020.

use area designation for purposes of the Oakland Sports and Mixed-Use Project, or whether these areas are needed for port priority use and should continue in port priority use designation."

Furthermore, Seaport Plan General Policy 4 states, "Deletions of the port priority use and marine terminal designations from this plan should not occur unless the person or organization requesting the deletion can demonstrate to the satisfaction of the Seaport Planning Advisory Committee that the deletion does not detract from the regional capability to meet the projected growth in cargo. Requests for deletions of port priority or marine terminal designations should include a justification for the proposed deletion and should demonstrate that the cargo forecast can be met with existing terminals."

In acting on BPA 2-19, the Commission must ultimately determine whether the Port Priority Use Area designation should be removed from Howard Terminal. However, based on our review of the material provided, the applicant (Oakland Athletics organization) has not provided enough information to support the proposition that the deletion of the Priority Use Area designation at Howard Terminal would not detract from the regional capability to meet the projected growth in cargo. As a result, BCDC staff requires additional information and analysis from the Oakland Athletics related to whether Howard Terminal is needed for Port Priority Use, in order to make a recommendation regarding the proposed amendment to the Commission.

Pursuant to Seaport Plan General Policy 4, the burden is on the Oakland Athletics, as the applicant, to demonstrate that deleting the Port Priority Use designation from Howard Terminal would not detract from regional cargo capacity. On September 14, 2021, BCDC separately emailed the Oakland Athletics, the Port of Oakland, and the City of Oakland, who have been working with the Oakland Athletics, to request the necessary information. The Port responded on October 7, 2021, providing some additional information but not addressing the major issues raised in BCDC staff's email. On October 21, 2021, BCDC responded by email, reiterating the outstanding substantive issues and calling for continued collaboration to address them. On November 17, 2021, BCDC executive leadership and staff met with the Port of Oakland executive leadership and staff, and Port staff agreed that it would provide additional information and analysis on behalf of the Oakland Athletics to support the application for BPA 2-19. BCDC staff further met with Port of Oakland staff on December 15, 2021; January 11, 2022; and January 21, 2022, to coordinate and provide the Port with further direction on the information necessary for BCDC to formulate its recommendation with respect to the BPA application. The memorandum submitted on February 2, 2022, does not provide the necessary information that BCDC staff identified in its September 14, 2021, email or in subsequent conversations with the Port of Oakland.

Regarding the substance of the February 2, 2022, memorandum, first, while it is correct that BCDC staff have generally been using the Moderate Growth scenario for our planning purposes, we want to be clear that as the ultimate decisionmaker, the Commission retains the discretion to rely on whichever growth scenario(s) it deems most appropriate in acting on BPA 2-19. Regardless of its decision and the basis for its decision, the Commission's action will need to

proceed as required by law and be supported by findings, and those findings must be supported by the evidence. In order to support the Athletics' request for BPA 2-19, the Athletics and/or the Port need to provide the evidence to support the Commission's ability to make findings that will justify its decision under the law.

Second, the Port's memorandum only considers whether Howard Terminal will be needed for regional ***container*** cargo capacity. As we wrote in our September 14, 2021, email to the Port, Page 12 of the Executive Summary of the Cargo Forecast states:

> "Oakland's Howard Terminal capacity may be required for container handling under the forecast scenarios, depending on what degree of other productivity improvement is implemented at other terminals. In addition to its terminal acreage, Howard's berth capacity may be required to handle larger vessels or additional services under a Strong Growth scenario, particularly if Berths 20-21 are used for dry bulk cargo. Howard Terminal may also be a logical expansion site for Ro-Ro vehicle handling. Howard could also handle dry bulk cargo under some circumstances, and Schnitzer Steel has expressed interest in using a portion of Howard to expand its adjacent operations."

We appreciate the additional information provided by the Port regarding container cargo projections. However, there is no mention of other types of cargo and whether removing Howard Terminal from the Port Priority Use Area would detract from the region's capability to meet the projected growth in those other types of cargo. In fact, Howard Terminal is the only dormant or underutilized site identified in the Cargo Forecast that could potentially be used for any of the three major cargo types (Container, Ro-Ro, or Dry Bulk). For reference, see "Exhibit 14: Bay Area Seaport Expansion Sites" in the forecast. BCDC staff identified this issue in the September 14, 2021 email and have asked the Port in subsequent meetings on December 15, 2021; January 11, 2022; and January 21, 2022 for a detailed explanation as to whether Howard Terminal would be suitable for handling other types of cargo or would be needed for other port-related uses but have not received any information on these topics from the Port.

- Please provide additional information regarding whether Howard Terminal is suitable for handling other types of cargo or needed for other port-related uses besides container handling, as described and analyzed in the Cargo Forecast.

Howard Terminal is currently being used for ancillary services, which are valid Port Priority Uses under the existing Seaport Plan (see Finding 2 of the Port Priority Use Areas section on Page 8). For example, the Port is currently planning to open and operate a 25-acre off-terminal and paved container yard located at Howard Terminal, equipped to move containers off chassis and store them for rapid pick-up as part of an effort to improve the flow of agricultural exports. The Cargo Forecast also notes that from 2014 to present, Howard Terminal has been used for a mix of other ancillary port uses, including longshore worker training, truck parking and staging, container and chassis storage, cargo transloading, layberthing, and tugboat docking. BCDC staff also identified this issue of ancillary uses in the September 14, 2021 email and have asked the Port in subsequent meetings (December 15, 2021; January 11, 2022; and January 21, 2022) for a response regarding where these port operations would be relocated.

- Please provide additional information on where these ancillary port services and uses would be relocated if Howard Terminal is removed from Port Priority Use, including whether there is additional room for such uses at the Port, or whether the uses would be relocated elsewhere. Please clarify whether removing these uses would detract from the regional capability to meet the projected growth in cargo.

Please note that per Environmental Justice and Social Equity Policy 1 of the Bay Plan, "The Commission's guiding principles on environmental justice and social equity should shape all of its actions and activities." Without additional information from the Port, as requested above, BCDC staff cannot evaluate the potential environmental justice impacts of removing Howard Terminal from Port Priority Use.

- Please provide a statement and evaluation of whether the proposed removal of Howard Terminal from Port Priority Use is consistent with the Bay Plan's Environmental Justice and Social Equity policies, including any community engagement relating to the question of whether Howard Terminal is needed for Port Priority Use and how that feedback has been addressed.

As you know, AB 1191 (Bonta) requires BCDC to make a decision on the proposed amendment within 140 days of certification of the City of Oakland's final Environmental Impact Report (FEIR) for the Oakland Waterfront Ballpark District. Oakland City Council voted to certify the FEIR on February 17, creating a July 7th deadline for BPA 2-19. BCDC staff have developed the following timeline to meet this deadline:

- March 4, 2022: Mail staff report to SPAC.
- March 16-18, 2022 (TBD): SPAC meeting and recommendation, including presentation by the Oakland Athletics and/or the Port as to why Howard Terminal is no longer required for Port Priority Use.
- April 1, 2022: Preliminary Staff Recommendation and Environmental Assessment.
- May 5, 2022: Public Hearing.
- June 2, 2022: Commission Vote.

Under this tight timeline, it was critical for BCDC staff to have received the aforementioned requested information already from the Port of Oakland, the majority of which unfortunately was not provided. In order to timely incorporate any additional information and analysis, which the Oakland Athletics and/or the Port of Oakland would like to provide, in our staff report to the Seaport Planning Advisory Committee meeting that is planned for mid-March, we require a comprehensive response by the Oakland Athletics and Port of Oakland to this letter by **February 25, 2022**. This will enable us to adequately consider all relevant information in developing our recommendation when this item comes before the Seaport Planning Advisory Committee (SPAC) and the Commission during public hearings. At the SPAC meeting, we also anticipate that the Oakland Athletics and the Port of Oakland will provide a presentation in support of the proposed amendment, therefore, we will need the Athletics' and/or the Port's

SPAC presentation(s) no later than one week before the SPAC meeting date in order to review and ensure it is available to the public. Please anticipate submitting this presentation, which must be formatted to be ADA accessible, by **March 9th**.

Furthermore, on February 3, 2021, the Commission held a briefing regarding the process and timeline for considering BPA 2-19. Our Commissioners had a number of questions about Howard Terminal. BCDC staff have received additional questions after the briefing from Commissioners and anticipate receiving many more during the public hearing process for this amendment. Without being able to incorporate the information requested above into the staff report, BCDC staff will be unable to adequately answer Commissioners' questions or provide the Commission with a recommendation that would favor the adoption of BPA 2-19.

Once again, we look forward to hearing from you regarding these and the other issues that BCDC staff have raised during our discussions.

Sincerely,

DocuSigned by:
Cory Mann
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CM / rc